

**NEW MEXICO CHARTER SCHOOL
EDUCATIONAL SERVICE ASSOCIATION**

Doing Business as ACES

BOARD POLICIES

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I. FINANCE POLICIES

I. A. Fiscal Management Goals/Priority Objectives

I. A. 1. EVALUATION OF FISCAL MANAGEMENT

I. B. Annual Budget

I. B. 1. BUDGETING SYSTEM

I.B.1.a. Executive Committee Responsibility

The Executive Committee of ACES demands not only excellence in services provided but also proficiency in business management to ensure adequacy of fiscal requirements. Therefore, the Executive Committee shall assume its obligation in the provision of financial support for the program. (Amended 11.09.2018)

The Executive Committee shall hold the Executive Director accountable for the results produced. (Amended 11.09.2018)

I.B.1.b. Staff Responsibility

The administration of the business affairs of ACES shall be executed in accordance with statutory provisions and terms, ACES Bylaws and Policies, and prescribed administrative regulations and procedures.

I. A. 1. FISCAL YEAR

The fiscal year shall be July 1 to June 30.

I. A. 2. BUDGET PLANNING, PREPARATION, AND SCHEDULES

I.B.2.a. Preparation

The Executive Director shall complete preparation of the budget and submit it to the Executive Committee so it can be approved by the Executive Committee before the beginning of the fiscal year. (Amended 11.09.2018)

I.B.2.b. Dissemination

After the Budget is adopted by the Executive Committee, one (1) copy shall be sent to each member of the approving committee. (Amended 11.09.2018)

A copy of the Budget document shall be entered into the official minutes and shall be available for inspection by the public.

I. A. 3. BUDGET IMPLEMENTATION

I.B.3.a. Implementation

The Executive Director shall implement, monitor and report quarterly on budget implementation. (Added 12.8.2017)

I.B.3.b. Budget Adjustment Request

It is required that a Budget Adjustment Request shall be recorded in Executive Committee meeting minutes. (Added 12.8.2017)(Amended 11.09.2018)

I. A. 4. BUDGET TRANSFERS

The Executive Committee may amend the Budget if deemed necessary to meet unforeseen contingencies. (Amended 11.09.2018)

Budget transfers shall be made with the approval of the Executive Director. (Amended 11.09.2018)

I. B. Funding Proposals, Grants, and Special Projects

Monies for all proposals, grants and special projects shall be accounted for by fund.

I. C. Revenues from Non-tax Sources

I. C. 1. MEMBERSHIP

The Executive Committee shall determine annual contributions from participating members. An administrative fee as determined by the Executive Committee will be assessed for all services provided. (Amended 11.09.2018)

I. C. 2. FEDERAL, STATE, AND LOCAL FUNDING

The Executive Director shall pursue potential sources of funds, including grants. (Amended 11.09.2018)

I. C. 3. GIFTS

ACES may accept any contribution, gift, bequest, or device for any purpose of ACES upon approval of the Executive Director. (Amended 11.09.2018)

I. D. Banking Services

I. D. 1. AUTHORIZED SIGNATURES

All checks, drafts, electronic payments, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ACES shall be signed by two individuals for amounts over \$20,000 for reimbursement of bid items and over \$1000 for all other items, and in such a manner as shall from time to time be determined by Resolution of the Executive Committee. (Amended 11.09.2018)

Authorized signatures may be generated electronically through the financial management system. (Added 12.07.2020)

The Resolution of the Executive Committee shall identify the signors and shall include at least two staff and the Board President, Vice President and Treasurer. (Amended 11.09.2018)

No payment shall be authorized by the recipient. (Added 11.09.2018)

I. D. 2. DEPOSITORY BANK

The Executive Committee shall select a depository bank, according to the regulations provided for members in selecting depository banks. All funds of ACES shall be deposited within one business day of receipt to the credit of ACES in such banks, trust companies, or other depositories as the Executive Committee or its agent may select. (Amended 11.09.2018)

I. E. Bonded Employees and Officers

All staff and officers that are signatories, and that handle checks as a part of their written job description shall be bonded.

I. F. Fiscal Accounting and Reporting

I. F. 1. ACCOUNTING SYSTEM

The Executive Director shall establish a centralized and standard accounting system for ACES, keyed to and correlated with revenue and expenditure classifications in the budget. (Amended 11.09.2018)

I. F. 2. TYPES OF FUNDS/REVOLVING FUNDS

I.G.2.a. General Operational Fund

The ACES General Operational Fund will be a primary fund of ACES, designed to provide the basis of the day to day operations of ACES. Funding shall come from any prescribed membership assessments, sale of products and services and contributions.

I.G.2.b. Permanent Fund

I.G.2.b.i The ACES Permanent Fund will be a fund of ACES, designed to provide a long-term financial base.

I.G.2.b.ii Funds from the Permanent Fund can only be dispersed upon written agreement of the Executive Committee and the Executive Director. (Added 10.29.2016) (Amended 12.8.2017) (Amended 11.09.2018)

I.G.2.B.III The Permanent Fund shall be increased annually upon recommendation of the Executive Director and approval of the Executive Committee. (Added 10.29.2016)

I. F. 3. FINANCIAL REPORTS AND STATEMENTS

The Executive Director shall present a statement of financial condition of ACES at each regular Executive Committee meeting, or at any other time at the discretion of the President or upon the request of the Executive Committee. (Amended 11.09.2018)

I. F. 4. INVENTORIES

The Executive Director shall maintain a continuing inventory of all property, always have a report available, and file a summary annually with members.

Annual summaries of losses or damages to equipment shall be reported to the Executive Committee by the Executive Director. (Amended 11.09.2018)

Assets with a life of three (3) or more years and a value of Two Thousand Five Hundred Dollars (\$2,500) or more shall be inventoried. (Amended 12.8.2017)

Capital assets valued at equal or greater than Five Thousand Dollars (\$5,000) shall be capitalized and depreciated.

I. F. 5. INSURANCE PROGRAMS

Insurance shall be carried on ACES property to protect the investment and interest of the Executive Committee. (Amended 11.09.2018)

I. F. 6. SECURITY

The Executive Director shall establish a written plan for building security and technology.

I. F. 7. EQUIPMENT AND SUPPLIES MANAGEMENT

Any equipment assigned to an employee for extended use shall be accepted as the responsibility of the employee in writing. (Added 12.8.2017)

I. F. 8. AUDITS/FINANCIAL MONITORING

I.G.8.a. Audits

An annual audit of the fiscal accounts of ACES shall be made by an independent certified public accountant approved by both the Executive Committee and the Office of the State Auditor and filed with appropriate agencies as required. (Amended 11.09.2018)

I.G.8.b. Fiscal Review

The Executive Committee shall monitor that sufficient funds are made available for effective operation of the programs of ACES. (Amended 11.09.2018)

I. G. Purchasing

I. G. 1. PURCHASING AUTHORITY

The Executive Director shall ensure that maximum value be obtained for each dollar expended, and that purchasing comply with all provisions of State Code.

I. G. 2. PURCHASING PROCEDURES

The Executive Director shall establish guidelines pertaining to: requisition and selection of goods and services; relations with vendors; specifications; Bids and price quotations; award of open-marked orders or contracts.

I. G. 3. PETTY CASH

Petty cash shall not exceed \$200. Petty cash reimbursement shall be recorded by account.

I. H. Payroll

Payday shall be determined by the Executive Director and approved by the Executive Committee. (Amended 11.09.2018)

I. I. Member Payments

I. I. 1. PAYMENTS BY MEMBERS

(a) Payments shall be made by members to ACES within 15 days of receipt of invoice for services and personal tangible property that is delivered and acceptable.

(b) Payments not received in 30 days shall be delinquent. The Executive Director shall implement a process for collection of delinquent funds. (Amended 12.8.2017) (Amended 11.09.2018)

(c) A delinquent fee may be assessed. (Added 12.8.2017)

I. I. 2. MEMBER'S ACCRUED VALUE

Each member shall accrue value in ACES in proportion to the member's use. The total of the accrued value shall be the increase in the retained earnings of the agency during that period.

For accounting purposes, members shall accrue earnings from July 1st of the year of their membership. No accrued value shall be paid to any member unless ACES is dissolved and totally liquidated.

I. J. Expense Authorization/Reimbursement

I. J. 1. TRAVEL AND SUBSISTENCE

Travel and per diem rates shall follow state-authorized rates according to NMAC 2.42.2, as budget allows. (Amended 11.09.2018) (Amended 12.07.2020)

Staff may be reimbursed for expenses incurred only during authorized out-of-town trips at the ACES per diem rate.

Reimbursement may be made for actual expense of commercial carrier at less than first class rates unless reservations can be achieved only in first class accommodations.

Other necessary expenses incurred by ACES staff in connection with official ACES business, and approved by the Executive Director, are recoverable through reimbursement.

Such expense claims must be accompanied by a signed statement.

Staff whose travel reimbursement is regulated by the state or federal government are exempted from this policy, and reimbursement shall be made according to the directions of the agency concerned.

The Executive Committee shall approve expense reimbursements claimed by the Executive Director. (Amended 11.09.2018)

II. PERSONNEL POLICIES

II. A. DEFINITIONS

II. A. 1. AT-WILL EMPLOYMENT

The employee/employer relationship is “at-will” unless stated in a written contract. This means that at the sole discretion of either the employer or the employee, the relationship may be terminated with or without cause and with or without notice. Personnel practices, including the right to hire, assign, transfer, suspend or discharge, to relieve employees from duty and to maintain discipline and efficiency of employees, rest exclusively in the sole discretion of the employer. The employer may introduce new administrative methods and job requirements as changing needs indicate. The employer expressly reserves the right to terminate any employee at the sole discretion of the employer. Any representations that change the employee status from an at-will employment status must be in writing and must be signed by the Executive Director.

II.A.1.a. Full Time

At-will full-time employees work on a contract for an average of 35 hours or more per week for a fixed amount per year, or on time cards for an average of 35 hours or more per week, with averages calculated over a two-month period.

II.A.1.b. Part Time

At-will part time employees work for an average of less than 35 hours per week for a fixed amount per year, or on time cards for an average of less than 35 hours per week, with averages calculated over a two-month period.

II.A.1.c. Variable Event Cadre and Ancillary

At-will Cadre and Ancillary employees work on assigned ‘events’ with no expectation of continued employment. The charter schools that utilize their expertise have no obligation to continue the contract beyond specific events.

II.A.1.d. Occasional

At-will Occasional employees work on a temporary basis for specific tasks. The duration of their employment shall not exceed one year.

II. A. 2. JUST CAUSE EMPLOYMENT

The Just Cause Employment is for management and senior professional staff members and the employee/employer relationship is through a definite period as stated in a written contract. This means that neither the employer nor the employee may terminate the contract without meeting the stipulations of the Just Cause Employment Agreement. The relationship may be terminated with just cause and with appropriate notice by the employer.

I.A.2.a. Full Time

Just cause employees work on a contract for an average of 35 hours or more per week for a fixed amount per year, or on timecards for an average of 35 hours or more per week. Their contract is for a fixed length of time.

I.A.2.b. Part Time

Just cause employees work on a contract for an average of 35 hours or more per week for a fixed amount per year, or on timecards for an average of 35 hours or more per week. Their contract is for a fixed length of time.

II. A. 3. EXEMPT EMPLOYMENT

Management and senior professional staff members are expected to spend whatever time is required for ACES to meet its commitment, without additional or overtime pay. They are exempt from overtime qualifications by IRS rules.

II. A. 4. LEAVE

Leave is any authorized absence, with or without pay, during the regularly scheduled work hours, which is properly approved in advance.

II. A. 5. IMMEDIATE FAMILY

Immediate Family includes spouse, parent, parent-in-law, child, stepchild, grandparent, grandchild, sister/brother, sister-/brother-in-law, aunt/uncle, niece/nephew, and any individual with whom an employee has a personal relationship.

II. B. GENERAL PERSONNEL POLICIES

II. B. 1. EQUAL EMPLOYMENT OPPORTUNITY STATEMENT

ACES subscribes to a policy of equal employment opportunities and will maintain and conduct all practices relating to recruitment, hiring, discipline, and other terms and conditions of employment in a manner which does not discriminate on the basis of race, color, religion, national origin, age, gender, sexual orientation, disability, marital status, height, weight, or veteran status.

II. B. 2. ANTI-HARASSMENT POLICY

Harassment because of religion, race, color, national origin, sex, age, height, weight, handicap, disability, marital status, or other legally protected status is unlawful discrimination and is prohibited by federal law and the employer. The employer will not tolerate any form of harassment.

For the purposes of this Policy, "Harassment" means unwelcome verbal communication or physical contact because of religion, race, color, national origin, gender, sexual orientation, age, height, weight, handicap, disability, marital status, or other legally protected status, which unreasonably interferes with a person's work performance or which creates an intimidating, hostile or offensive work environment.

"Harassment "includes "sexual harassment"

ACES is committed to providing a workplace that is free from sexual harassment. Sexual harassment in the workplace is against the law and will not be tolerated. When ACES determines that an allegation of sexual harassment is credible, it will take prompt and appropriate corrective action.

Sexual Harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: An employment decision affecting that individual is made because the individual submitted to or rejected the unwelcome conduct; or the unwelcome conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or abusive work environment.

Certain behaviors, such as conditioning promotions, awards, training, or other job benefits upon acceptance of unwelcome actions of a sexual nature, are always wrong.

Unwelcome actions such as the following are inappropriate and, depending on the circumstances, may in and of themselves meet the definition of sexual harassment or contribute to a hostile work environment: Sexual pranks, or repeated sexual teasing, jokes, or innuendo, in person or via e-mail; Verbal abuse of a sexual nature; Touching or grabbing of a sexual nature; Repeatedly standing too close to or brushing up against a person; Repeatedly asking a person to socialize during off-duty hours when the person has said no or has indicated he or she is not interested (supervisors in particular should be careful not to pressure their employees to socialize); Giving gifts or leaving objects that are sexually suggestive; Repeatedly making sexually suggestive gestures; Making or posting sexually demeaning or offensive pictures, cartoons or other materials in the workplace; and Off-duty, unwelcome conduct of a sexual nature that affects the work environment.

A victim of sexual harassment can be a man or a woman. The victim can be of the same sex as the harasser. The harasser can be a supervisor, co-worker, other ACES employee, or a non-employee who has a business relationship with the ACES.

I.B.2.a. ACES Responsibilities Under This Policy

If ACES receives an allegation of sexual harassment, or has reason to believe sexual harassment is occurring,

it will take the necessary steps to ensure that the matter is promptly investigated and addressed. If the allegation is determined to be credible, ACES will take immediate and effective measures to end the unwelcome behavior. ACES is committed to act if it learns of possible sexual harassment, even if the individual does not wish to file a formal complaint.

ACES is committed to ensuring that all investigations of sexual harassment are conducted in a prompt, thorough, and impartial manner.

Supervisors and other responsible ACES employees who observe, are informed of, or reasonably suspect incidents of possible sexual harassment must immediately report such incidents to the Executive Director or Board President, which will either initiate or oversee a prompt investigation. Failure to report such incidents will be considered a violation of this policy and may result in disciplinary action. The Executive Director or Board President should take effective measures to ensure that no further apparent or alleged harassment occurs pending completion of an investigation.

ACES will seek to protect the identities of the alleged victim and harasser, except as reasonably necessary (for example, to complete an investigation successfully). ACES will also take the necessary steps to protect from retaliation those employees who in good faith report incidents of potential sexual harassment. It is a violation of both federal law and this policy to retaliate against someone who has reported possible sexual harassment. Violators may be subject to discipline.

Employees who have been found by ACES to have subjected another employee to unwelcome conduct of a sexual nature, whether such behavior meets the legal definition of sexual harassment or not, will be subject to discipline or other appropriate management action. Discipline will be appropriate to the circumstances, ranging from a letter of reprimand through suspensions without pay of varying lengths to separation for cause. A verbal or written admonishment, while not considered formal discipline, may also be considered.

I.A.2.b. Employees' Rights and Responsibilities Under This Policy

Any employee who believes he or she has been the target of sexual harassment is encouraged to inform the offending person orally or in writing that such conduct is unwelcome and offensive and must stop.

If the employee does not wish to communicate directly with the offending person, or if such communication has been ineffective, the employee has multiple avenues for reporting allegations of sexual harassment and/or pursuing resolution.

Employees are encouraged to report the unwelcome conduct as soon as possible to the ACES Executive Director. If the Executive Director is any involved in the unwelcome conduct the employee is encouraged to report the unwelcome conduct to the Board President.

In addition to reporting sexual harassment concerns to the Executive Director or Board President, employees who believe they have been subjected to sexual harassment may elect to pursue resolution in several ways, including mediation. Mediation is an informal way to resolve office problems using a trained mediator who facilitates communication between the parties to the dispute. If an employee chooses to attempt resolution through mediation, management is obligated by ACES policy to send a representative to the table. If a resolution is not reached, the parties may continue to pursue their rights in any other appropriate forum.

All ACES employees, including but not limited to staff, supervisors, and administration, are required to comply with this policy. Employees are also expected to behave professionally and to exercise good judgment in work-related relationships, whether with fellow employees, business colleagues, or members of the public with whom they come into contact in the course of ACES duties. Further, all employees are expected to respond appropriately to prevent sexual harassment. Unwelcome behavior of a sexual nature should be stopped before it becomes severe or pervasive and rises to a violation of law

II. B. 3. BACKGROUND CHECKS

ACES Cadre Professionals, who will have direct contract with students while performing services through an ACES Agreement, will be required to have on file with ACES a Background Check. All Background checks will be at the expense of the Cadre Professional. (Added 10.29.2015)

II. B. 4. ACES SUBSTANCE ABUSE POLICY

ACES recognizes the problems associated with substance abuse in society and in the workplace. Substance abuse poses a serious threat to our employees and clients.

This policy seeks to balance our respect for individual privacy with our need to keep a safe, productive, work environment. ACES reserves the right to change this policy at any time upon notice to our employees.

ACES prohibits the possession, use, and distribution of a non-prescribed controlled substance (as defined in federal and state law in the workplace, while on ACES business, or while driving a vehicle on ACES business. (Amended 11.09.2018)

Alcohol consumption during work hours is prohibited, whether on company property or off. If it is reasonably suspected that you are impaired by alcohol or illegal drugs, or if you are involved in an accident in the workplace, you may be asked to immediately present yourself for drug testing at an authorized medical facility. Reasonable suspicion will be determined in the sole discretion of the authorized ACES supervisor.

Reasonable suspicion shall be based upon the observations of a supervisor or others that the employee is impaired. All determinations will be based upon verifiable suspicion that an employee is using or has used drugs or alcohol and shall be drawn from specific objective facts and reasonable inferences drawn from those facts in the light of experience. If you refuse to submit to drug testing, under these circumstances of reasonably suspected impairment, your employment will be terminated.

ACES will contract with an appropriate agency for conduct of drug and alcohol testing, which will be based upon a sample of urine submitted at the time of the test. Sufficient quantities of the sample will be obtained and segregated into two units. One unit will be tested for the presence of metabolites of illegal drugs or alcohol. If the test is positive, the employee may, if he or she wishes, have the second sample sent to another lab for testing, at his or her expense.

A positive test will result in disciplinary action up to and including termination of employment. It is a condition of your continued employment with ACES to authorize the release of test results to the employer of any tested sample.

As with other medical reports, all testing results will be maintained in a confidential medical file of the employee and will not be released absent authorization of the employee, or court order, or in compliance with state and federal law.

II. B. 5. GOOD MORAL CHARACTER/CRIMINAL HISTORY CHECKS/ DRIVING RECORDS

It is the policy of ACES to conduct a criminal history check upon condition of employment and every 5 years thereafter through the New Mexico State Police, Sex Offenders Registry, Abuse/Neglect, and other police agencies where appropriate. Since this information may not be available until after an applicant has been hired and assumed responsibilities, it may be necessary to conduct a post-hire good moral character assessment that includes information found in the criminal history report. If the employer substantiates that the employee provided dishonest or false answers on the job application or during employment interviews, the employee can be terminated immediately. (Amended 11.09.2018)

II. B. 6. OTHER EMPLOYMENT

Employees are not permitted, without approval, to perform any services or have any interest or involvement, either directly or indirectly, in any other business, which resembles or competes with ours. If an employee violates this policy, he or she may be terminated. If an employee already has or is considering an outside business involvement or employment which would appear to violate this rule, they shall advise your supervisor immediately. (Amended 11.09.2018)

II. B. 7. PUBLICITY

Only the Executive Director or a staff member specifically designated by the Executive Director shall make all official statements to the public of whatever nature.

II. B. 8. PROFESSIONAL DEVELOPMENT

ACES encourages professional development and staff education. The Executive Director shall encourage staff members to attend professional meetings, rotating attendance when possible. The Executive Director shall employ

such recognized elements as staff meetings, evaluations and progress reports and in-service education sessions. All training expenditures must be approved by the Executive Director.

II. B. 9. GIFTS, GRATUITIES, AND LOANS

An employee shall not be permitted to accept loans, gifts, money, goods, services or other preferred arrangements of personal benefit under any circumstances directly or indirectly involving possible interest, or appearance of influence upon the way they perform their work, make their decisions or otherwise discharge their duty as an ACES employee. Any gift of doubtful nature shall be cleared with the Executive Director.

II. B. 10. SOLICITATIONS AND FUND DRIVES

Contributions by employees to community organizations shall be totally voluntary. The Executive Director and/or Board shall at no time estimate or determine what amount such contributions shall be. No solicitations of any kind shall be allowed in ACES, with the exception of those approved by the Board.

II. B. 11. GRIEVANCES

An employee who is dissatisfied with any aspect of the employment relationship, other than termination, may file a written grievance with the employee's supervisor. The supervisor shall, within 10 working days, discuss the grievance with the employee and attempt to resolve it. The proposed resolution suggested by the supervisor shall be final and binding, unless reviewed by the Executive Director.

If the employee is not satisfied with the decision of the supervisor, within five working days of the decision by the supervisor, the employee may request a review by the Executive Director. Such request shall be in writing. Such review shall be conducted within 10 working days, and a copy of the proposed resolution suggested by the Executive Director shall be final and binding, unless reviewed by the Executive Committee. (Amended 11.09.2018)

An employee who is not satisfied with the proposed resolution of the grievance by the Executive Director may file, within 10 working days, a written appeal with the Executive Committee. Final action shall be taken by the Executive Committee within two months of receiving appeal. Such action shall be reduced to writing, included in the minutes of the Board and a copy thereof shall be delivered to the employee. The proposed resolution of the Executive Committee will be final and binding. (Amended 11.09.2018)

II. B. 12. EMPLOYMENT OF IMMEDIATE FAMILY

The employment of immediate family of employees is permitted by ACES, as long as qualifications for the position are met and, in the opinion of ACES, employing the immediate family will not create an actual or perceived conflict of interest. Employees will not be permitted to work in positions where relatives will influence, or be influenced by, decisions affecting work assignments, responsibilities, salary, promotion, or other career matters. Managers who seek to hire, transfer, or promote their own immediate family must obtain prior approval from their supervisor.

ACES reserves the right to use its sole discretion in placing and transferring relatives of its current employees in a manner calculated to eliminate potential conflicts of interest or other employment complaints. To do this, ACES will take action that is fair and equitable and that will remove any direct reporting or management relationship between employees who are defined as 'relatives.'

II. B. 13. PERSONAL RELATIONSHIPS AMONG COWORKERS

Personal relationships may create an actual or perceived conflict of interest, and/or create the risk of sexual harassment/hostile work environment related claims. Thus, supervisors may not hire, promote, or directly supervise any person with whom they have a personal relationship, nor may they engage in any personal relationships with their subordinates.

A personal relationship includes but is not limited to the following activities: dating, sharing the same household or living together.

An employee must notify ACES if his or her relationship to another employee changes to fit the definition of 'immediate family'. If a personal relationship develops between a supervisor and subordinate, both employees are required to inform their supervisor.

Similarly, ACES reserves the right to use its sole discretion in the hiring or placement of new employees who have

personal relationships with current employees. The employer further reserves the right to review and modify the placement of all current employees who have personal relationships with co-workers. ACES will take action that is fair and equitable to eliminate any direct reporting or management relationship between employees who are involved in a personal relationship. Finally, the employer may change the placement of individuals involved in a personal relationship regardless of whether there is a direct reporting or management relationship if the employer determines that the personal relationship interferes with the employee's job performance.

II. B. 14. JOB DESCRIPTIONS

A written job description listing date of hire, salary, duties, qualification, and any conditions of employment shall be signed by the employee and maintained on file in their personnel file.

II. B. 15. PERSONNEL FILES

A personnel file will be maintained for each employee. For the purpose of maintaining complete and accurate personnel files, employees are required to report any changes in their personal status to the employer. The information needed is: change in address or phone number, any change affecting your tax withholding status, legal change of name, change of persons designated to call in case of emergency, or changes that would affect your insurance benefits

Employees may see their personnel file by submitting a written request to the Human Resource Director or Executive Director. Employee access to their personnel file will be provided in compliance with all State and Federal laws. Copies will be provided and a reasonable per copy cost may be charged.

II. B. 16. EVALUATIONS

Staff evaluations are for the purpose of evaluating job performance, providing feedback to employees, and letters of recommendation. A written evaluation will be performed at the end of three months and at least annually thereafter. All staff evaluations are maintained in their personnel file. If there is disagreement, a written statement by the staff member may be attached to the evaluation and placed into their personnel file. The statement must specifically state what the disagreement is about, be signed and dated.

II. B. 17. RESIGNATION

Resignations are requested to be in writing, with two weeks' notice for non-management At-Will staff.

If an employee decides to terminate your employment with ACES, they must notify their supervisor or the Executive Director.

II. B. 18. TERMINATION

The employment of any at-will employee may be terminated by the Executive Director/or designee, or Executive Committee of ACES, at any time, for any reason whatsoever, effective forthwith, and in such event written notice of said termination shall be delivered to the employee. Termination includes both voluntary and non-voluntary separation. (Amended 11.09.2018)

II. B. 19. POLICY FOR STAFF INJURIES

Any employee who is injured while at work must follow the following policy: Report the injury to supervisor or Executive Director immediately; and complete an Employee Report of Injury Form, making sure you complete the entire front page, sign it, date it, and leave it for your supervisor to review within 24 hours.

If employee requires medical attention, they must immediately notify supervisor or Executive Director.

Time off due to work injury may be counted towards your Family Medical Leave time.

II. B. 20. PERSONNEL POLICIES

These policies apply to all employees of ACES.

The development of policies shall be the responsibility of the Vice President of the Executive Committee in collaboration with the Executive Director or his designee. Such policies shall be subject to approval and review by the Board. All Personnel Policy statements shall be distributed to each employee.

Whenever there is a disagreement between a member of the staff and their supervisor over interpretation of a

personnel policy, it is to be presented to the Executive Director.

These policies are only meant to serve as a reference guide. The Policies and Benefits described are not conditions of employment, and do not reflect a contract between the employer and the employee. The employer reserves the unilateral right to add, delete, or amend the policies and benefits provided for in these policies. Employees should contact their supervisor or any member of management with questions concerning the contents of these policies.

A copy of ACES Personnel Handbook will be provided to each new employee, either electronically or in paper format. Additional paper copies will be readily available to all employees. Revisions will be distributed to all employees after a revision is made. The Handbook contains and expands upon the policies.

II. C. EMPLOYEE CONDUCT

II. C. 1. PERSONAL APPEARANCE AND CONDUCT

All employees should constantly be aware that they act as role models for the customers, and that their appearance and conduct reflect ACES. Staff are expected to maintain a high standard of neatness, cleanliness, and personal hygiene. All employees shall arrive for work in neat, clean clothing, appropriate for the working conditions. Clothing can be casual but should be in good repair and presentable. All staff must wear acceptable length shorts, shirts, and skirts. ACES staff serve as ACES representatives and should wear appropriate attire for planned activities. (Amended 11.09.2018)

II. C. 2. EMPLOYEE HONESTY AND INTEGRITY

Employee is hired by ACES with the fact in mind that their honesty and integrity are of the highest level. ACES expects these traits will greatly increase employees' chances of success throughout their employment with the organization. It is every employee's responsibility to enforce and/or report policy, rules, and procedure violations to their supervisor or Executive Director. (Amended 11.09.2018)

II. C. 3. SMOKING

Smoking shall not be allowed in ACES facilities. Smoking shall be prohibited in all ACES vehicles. Staff are not allowed to smoke in charter schools, off site work sites, or within 15 feet of entrances to buildings. The sale of smoking products at ACES is prohibited.

II. C. 4. SOCIAL NETWORKING POLICY (Deleted 12.8.2017)

II. C. 5. ABSENCES AND TARDINESS

Absenteeism is a failure to meet a scheduled shift exclusive of approved leaves. Tardiness is defined as the failure to report to work at the time scheduled.

Employees are expected to inform their supervisor that they will be late or absent as soon as it becomes evident. Employee must call each day you are going to be late or absent. Failure to do so will result in the employee being recorded as "late" or "no-show." Asking a friend, another employee, or a relative to give notification does not relieve the employee of the notification responsibility.

Any employee who is absent three (3) consecutive scheduled workdays without reporting their absence to their supervisor will be considered to have voluntarily quit their job and will no longer be employed by ACES.

II. C. 6. PERSONAL BUSINESS AND APPOINTMENTS

II. C. 7. BUILDING AND EQUIPMENT USE

Equipment and supplies belonging to ACES shall be used only for projects and activities which directly involve the operation of ACES.

Staff members are also instructed that the personal use of email and the Internet on company time is not permitted and may be grounds for corrective action up and to including discharge or termination. Internet sites, other than those used for business purposes, shall not be visited. All staff members are specifically prohibited from downloading programs and/or adding unauthorized software without the permission of the Executive Director.

This policy shall be reviewed annually if changes are necessary. (Amended 11.09.2018)

Licensing - ACES will observe the terms of all copyrights, software licenses, and agreements. Unauthorized software will not be allowed.

II. D. BENEFITS

II. D. 1. CADRE PROFESSIONAL PERSONNEL INSURANCE

Since Cadre Professional's work is often sporadic and short term, ACES will not offer health, dental, or vision insurance to Cadre Professionals unless required by state or federal law. ACES is not a member of NMPSIA or ERB. (Added 10.29.2015) (Amended 11.09.2018) (Amended 12.07.2020)

II. D. 2. ABSENCES WITH PAY

With the approval of the Executive Director, absences for the following reasons may be permitted with no reduction of personal time.

Pre-Induction Physicals. Employees ordered to report to the Armed Services will be excused for the time needed for such examinations.

Illness caused by Immunizations and Tests. Absences caused by illnesses resulting from an immunization or test required as part of the physical examination requirement of ACES may be excused.

Professional Conferences-Attendance at professional conferences or related meetings, when authorized by the Executive Director, shall be treated as special work assignments.

Hearings. The employee will be excused to attend a hearing on a grievance which they have presented to the Board, and when requested to appear at the hearing of another employee. (Amended 11.09.2018)

Emergencies. At the Executive Director's discretion, when employees are prevented from reporting to work due to Acts of God, the absence may be excused.

Jury Duty. Leave shall be granted to any employee who is called for jury duty. A statement shall be provided by the employee to indicate the total amount of compensation received for jury duty. Employees shall have the option of receiving their normal pay for jury duty or receiving the court rate. If an employee chooses to be paid by ACES for jury duty, then the court fee (excluding transportation) shall be turned over to ACES.

Service on Committees-An employee may serve on committees of a community or professional group. The Executive Director must approve such appointments and absences from work.

II. D. 3. LEAVE OF ABSENCE WITHOUT PAY

An absence without pay may be granted by the Executive Director (or designee) for not more than one (1) year after the careful consideration of the reasons provided in the written request for such leave.

A Leave of Absence Authorization form shall be completed for all leaves.

Leave of Absence approval by the Executive Director (or designee) will specify the duration of the leave, and effects on seniority, personal time, insurance and insurance payments, and other benefits will be detailed. Paid Time Off must be expended by the employee subject to prior approval by Executive Director (or designee). (Amended 11.09.2018)

Extension of the leave shall be requested in writing.

A return to work earlier than the scheduled termination of leave date may be arranged by the Executive Director or designee and the employee if a suitable position is available.

If the employer's portion of medical insurance is paid during leave, and the employee does not return to work after leave is over (for a minimum of 30 days), the employee shall be responsible for reimbursing ACES for ACES portion of the health insurance premiums. Employees on leave are responsible to pay their portion of the health insurance premiums when due or coverage will be terminated.

II. D. 4. WORK SCHEDULES

Work will be scheduled as necessary to assure staffing of regularly scheduled agency programs.

It may become necessary on occasion that an employee will work beyond their normal weekly hours. This request will be made by the supervisor or the Executive Director and is to be used only to perform those functions which were unable to be carried out during the normal working period. Additional work time must be approved by the supervisor or the Executive Director. This time will be compensated for as described under Overtime and Compensatory Time.

II. D. 5. MATERNITY LEAVE

Not all Maternity Leaves meet the requirements of the Family Medical Leave Act.

If Family Medical Leave is applicable see ACES Family Medical Leave Policy.

If Family Medical Leave is not applicable ACES will grant 6 weeks Maternity Leave.

During the Maternity leave, ACES requires employees to first use all their personal time. Any leave not covered by personal time will be unpaid leave. (Amended 11.09.2018)

ACES will continue to pay the employer's portion of the health insurance premium during that time. If the employee does not return to work after leave is over (for a minimum of 30 days), the employee shall be responsible for reimbursing ACES for ACES portion of the health insurance premiums. Employees on leave are responsible to pay their portion of the health insurance premiums when due. If applicable Maternity Leave and Family Medical Leave will run at the same time. Maternity Leave is applicable to mother, father, or adoptive parents. Upon returning, employees will be reinstated to a similar position. (Amended 11.09.2018)

II. D. 6. MILITARY LEAVE

Employees inducted or enlist in the armed forces of the United States, must notify their supervisor so that arrangements can be made to authorize a leave. The leave shall be for a maximum period of four (4) years, except when the employee's period of military service may be involuntarily extended due to an act of war or a declared state of national emergency. In that event the period of military leave shall be extended, in accordance with federal law, until the end of the involuntary extension of the employee's military service. Employee must also apply for a reinstatement within ninety (90) days of their date of discharge or lose their seniority and forfeit their right to return. Members of the Armed Forces Reserve or National Guard Units who are required to participate in two (2) weeks of annual training will be granted a leave of absence provided proper documentation is provided. The employee may use personal time or may take leave without pay without penalty or disciplinary action. (Amended 11.09.2018)

II. D. 7. PAY PERIOD/PAYDAY

Payroll will be issued monthly except for participants in the Substitute Program. The workweek shall be defined as 7 consecutive 24-hour periods beginning Sunday and ending Saturday. (Amended 12.8.2017)

ACES issues payroll two ways; Direct Deposit or Checks. Each employee will be given written details outlining policy at hire.

If employee discovers a discrepancy in their pay, they must notify the office of the mistake. If the office is notified by five workdays prior to the following payday, the error will be corrected on the next payday.

II. D. 8. OVERTIME AND COMPENSATORY TIME

The nature of the organization's services necessitates that there be flexibility of work, especially for professional staff members involved in direct work with Charter Schools. Workloads, however, are expected to be reasonable and employees should be able to complete their assignments during regular working hours. Non-exempt at-will staff who must work overtime will be given an equal amount of compensatory time providing this is done within the next pay period or will be compensated on a time and one-half basis. Our work period for hourly employee's overtime calculations are based upon a 7-day work period beginning Sunday and ending Saturday. Overtime hours are based on actual time worked. Non-worked holidays and personal time hours are not included when calculating overtime. (Amended 11.09.2018)

II. D. 9. HOLIDAYS

The following holidays will be observed by ACES. Holidays are not paid during a medical, educational, or maternity leave. All non-exempt, full time employees who work on one of the designated holidays (midnight to midnight) will

be paid double their normal rate of pay. Time paid under this benefit will not be calculated as hours worked or determining overtime unless the employee works on the holiday. The Holidays are New Year’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas Day. (Amended 12/8/2017) (Amended 11.09.2018)

II. D. 10. PAID TIME OFF

All vacation leave and sick leave are considered Paid Time Off (PTO). Employees will be paid PTO at their current hourly rate. PTO paid under this benefit will not be calculated as hours worked for determining overtime. PTO showing on paycheck stubs indicates time potentially available through the end of the current pay period. (Amended 11.09.2018)

PTO is available to use the pay period following their probationary period.

Variable event Ancillary and Cadre employees are not eligible for PTO.

Employees are responsible to verify the accuracy of their PTO. If an employee believes there is a mistake in their PTO calculation, they have 90 days from the date of the mistake to request a review and correction if warranted.

PTO is not accumulated during a medical, educational, or maternity leave.

II. D. 11. STAFF PAID TIME OFF LEAVE ACCUMULATION

The number of years worked is increased on July 1st, for all employees who have completed a full year’s employment. All employees who are full time shall accrue personal time as follows:

Years of Employment	Hours Earned Per Month	Total Hours Earned Per Year	Total Days Earned Per Year
0-1 years	14.67	176	22
2-4 years	16	192	24
5-9 years	17.33	208	26
over 10 years	18.67	224	28

For Part-Time employees, the following schedule shall apply:

Averaging on a three-month basis 20 hours or more per pay period: 40% of the prorated schedule above

Averaging on a three-month basis less 20 hours per pay period: 0% of the prorated schedule above

Employees may not accumulate PTO hours more than 240 hours (except employees over 30 years who may accumulate 280 hrs.). At the end of the fiscal year employees may place 50% of the excess hours in a retirement account approved by ACES, and the remaining hours shall be forfeited. (Amended 11.09.2018)

II. D. 12. TRANSPORTATION AND OTHER EXPENSES

Reimbursement for the use of a personal car on the job other than to and from work shall be paid upon the approval of the Executive Director. The rate of reimbursement shall be determined by the Executive Committee. Should an unusual circumstance or emergency occur, necessitating transportation by taxi, bus, or other mode of travel, the cost of such may be reimbursed upon submitting a receipt, and/or explanation of the same. All such requests must have the approval of the Executive Director. (Amended 11.09.2018)

The following items are chargeable to expense accounts with the approval of the Executive Director:
Meals while more than 30 miles from home base, hotel expenses, telephone calls and other approved incidentals.
(Amended 11.09.2018)

Breakfast, lunch, or dinner meetings required by the agency or in the interest of the organization.

All expenses incurred shall not exceed state standards unless an emergency exists. Should an employee have any questions concerning work-related reimbursement they shall seek previous approval from the Executive Director.

II. D. 13. WORKER'S COMPENSATION INSURANCE

All employees are protected while on the job by Worker's Compensation Insurance. This insurance will provide coverage for employees if they are injured or suffer an occupational illness at work. Payments for medical expenses and lost time at work are determined by state law. This insurance also provides death benefits to your dependents (if any) in case of death caused by work. ACES pays the full cost of this protection. Failure to promptly report an injury may result in loss of benefits. When an employee misses work due to a worker's compensation injury, those hours lost shall count towards family medical leave. Employees are responsible for their portion of their health insurance premiums.

PTO time will not be credited during a worker's compensation absence unless the employee has PTO available to receive a full paycheck (worker's compensation will adjust their payments to cover this). ACES will pay employer's share of the individual's health insurance premiums for up to 3 months from the date the employee fails to have sufficient personal time to receive a full paycheck.

II. D. 14. SECTION 125/CAFETERIA PLAN

ACES provides a section 125 plan that allows employees to pay for their health insurance premiums, out-of-pocket health and dental expenses, and day care expense with pre-taxed dollars. Information is available at the ACES office.

II. D. 15. INSURANCE

ACES is not a member of NMPSIA. ACES will not offer health, dental, vision, or life insurance unless required by state or federal law. (Amended 11.09.2018) (Amended 12.07.2020)

II. D. 16. FAMILY MEDICAL LEAVE ACT

The Family Medical Leave Act will apply when ACES has 50 or more employees in 20 or more workweeks in the current or preceding calendar year, or when the law is modified to require such coverage.

III. PROCUREMENT POLICIES

III. A. GENERAL PROVISIONS

III. A. 1. APPLICABILITY OF THE PROCUREMENT CODE

III.A.1.a. General

Except as otherwise provided in the Procurement Code, Sections 13-1-28 through 13-1-199 N.M.S.A. 1978, the Code applies to every expenditure by ACES for the procurement of items of tangible personal property, services and construction.

III.A.1.b. General Federal Funds.

When procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code.

III.A.1.c. Exemptions.

The Procurement Code shall not apply to the following:

- 1 procurement of items of tangible personal property or services by ACES from a state agency, a local public body or external procurement unit, except as otherwise provided in Sections 13-1-135 through 13-1-137 N.M.S.A. 1978;
- 2 purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;
- 3 purchases of books and periodicals from the publishers or copyright holders thereof;
- 4 travel or shipping by common carrier or by private conveyance, or to meals and lodging;
- 5 purchase of livestock at auction rings, or to the procurement of animals to be used for research and experimentation; or
- 6 contracts with business for public school transportation services.

III.A.1.d. Effective Date.

These Procurement Policies apply only to contracts solicited or entered into after October 26, 2013.

III. A. 2. APPLICABILITY OF THIS RULE

III.A.2.a. General.

Except as otherwise provided in Subsections 2.2 and 2.3 of this Section, these regulations apply to every transaction to which the Procurement Code applies, except the following:

- 1 procurement of highway construction or reconstruction by the state highway department;
- 2 procurement by the judicial branch of state government;
- 3 procurement by the legislative branch of state government;
- 4 procurement by the boards of regents of state educational institutions ;
- 5 procurement of information processing resources procured through the information systems council;
- 6 procurement by the state fair commission;
- 7 procurement by the intertribal Indian ceremonial association;
- 8 purchases from the state board of education free textbook fund; and
- 9 procurement by all local public bodies.

III. A. 3. CENTRALIZATION OF PROCUREMENT ACTIVITY

III.A.3.a. ACES purchasing agent.

All procurement for ACES shall be performed by the ACES purchasing agent, except the following:

- 1 small purchases having a value not exceeding two hundred fifty dollars (\$250);
- 2 emergency procurements.

III.A.3.b. Purchasing Agent Designation.

All procurement for ACES shall be performed by an ACES purchasing agent designated by the ACES Executive Committee and approved by the CPO. (Amended 11.09.2018)

III. A. 4. INSPECTION OF PUBLIC RECORDS

The inspection of public records is governed by the Inspection of Public Records Act, Sections 14-2-1 through 14-2-3 N.M.S.A. 1978. To the extent that any provision of these regulations' conflicts with the Inspection of Public Records Act, as interpreted by the courts of this state, that act shall control. Furthermore, no obligation to keep data confidential which is contained in these regulations is intended to create any liability that would not otherwise exist under state law.

III. A. 5. DOLLAR AMOUNTS

Whenever a dollar amount appears in these regulations, such amount is the total amount that will be required to make full payment on a contract. Thus, for example, professional services costing five thousand dollars (\$5,000) may be procured pursuant to the small purchase regulations if the \$5,000-figure includes the applicable gross receipts tax, but the same services must be procured by competitive sealed proposals if the \$5,000-figure does not include the applicable gross receipts tax.

III. A. 6. SEVERABILITY

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

III. B. DEFINITIONS

1. "Architectural Services" means services related to the art and science of designing and building structures for human habitation or use and includes planning, providing preliminary studies, designs, specifications, working drawings and providing for general administration of construction contracts.
2. "Blind Trust" means a trust managed by a person other than the employee-beneficiary in which the employee-beneficiary is not given notice of alterations in the property of the trust.
3. "Brand-Name Specification" means a specification limited to describing an item by manufacturer's name or catalogue number.
4. "Brand-Name or Equal Specification" means a specification describing one or more items by manufacturer's name or catalogue number to indicate the standard of quality, performance or other pertinent characteristics and providing for the substitution of equivalent items.
5. "Business" means any corporation, partnership, individual, joint venture, association or any other private legal entity.
6. "Catalogue Price" means the price of items of tangible personal property in the most current catalogue, price list, schedule or other form that
 - 1 is regularly maintained by the manufacturer or vendor of an item; and
 - 2 is either published or otherwise available for inspection by a customer.
7. "Central Purchasing Office" means that office responsible for the control of procurement of items of tangible personal property, services or construction. "Central purchasing office" includes the purchasing division of the general services department and the state purchasing agent. There are two types of central purchasing offices, state central purchasing offices and central purchasing offices of ACES. Wherever the term "central purchasing office" appears, without specific reference to either type, both types are included.
8. "Change Order" means a written order signed and issued by a procurement officer directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order with or without the consent of the contractor.
9. "Confidential Data" means any data, for which a bidder or an offeror has made a written request for confidentiality, to the extent that the request is determined to be valid.
10. "Confidential Information" means any information which is available to an employee because of the employee's status as an employee of ACES, a state agency, or a local public body and which is not a matter of public knowledge or available to the public on request.

11. "Construction"

1 "Construction" means building, altering, repairing, installing or demolishing in the ordinary course of business any:

- 1 road, highway, bridge, parking area or related project;
- 2 building, stadium or other structure;
- 3 airport, subway or similar facility;
- 4 park, trail, athletic field, golf course or similar facility;
- 5 dam, reservoir, canal, ditch or similar facility;
- 6 sewage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility;
- 7 sewage, water, gas or other pipeline;
- 8 transmission line;
- 9 radio, television or other tower;
- 10 water, oil or other storage tank;
- 11 shaft, tunnel or other mining appurtenance;
- 12 electrical wiring, plumbing, gas piping, gas appliances or water conditioners;
- 13 air conditioning conduit, heating or other similar mechanical work; or
- 14 similar work, structures or installations.

2 "Construction" shall also include:

- 1 leveling or clearing land;
- 2 excavating earth;
- 3 drilling wells of any type, including seismographic shot holes or core drilling; and
- 4 similar work, structures or installations.

12. "Construction Management" and "Construction Manager"

1 "Construction management" means consulting services related to the process of management applied to a public works project for any duration from conception to completion of the project for the purpose of controlling time, cost and quality of the project.

2 "Construction Manager" means a person who acts as an agent of the state agency or local public body for construction management, for whom the state agency or local public body shall assume all risks and responsibilities.

13. "Contract" means any agreement for the procurement of items of tangible personal property, services or construction.

14. "Contract Modification" means any written alteration in the provisions of a contract accomplished by mutual action of the parties to the contract.

15. "Contractor" means any business having a contract with ACES, a state agency or a local public body.

16. "Cooperative Procurement" means procurement conducted by or on behalf of more than one state agency or local public body, or by a state agency or local public body with an external procurement unit.

17. "Cost Analysis" means the evaluation of cost data and profit for the purpose of arriving at costs actually incurred by a contractor, estimates of costs to be incurred by a contractor and a profit to be allowed to a contract.

18. "Cost Data" means factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred by a contractor or which have been actually incurred by a contractor in performing the contract.

19. "Cost Reimbursement Contract" means a contract which provides for a fee other than a fee based on a percentage of cost and under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms.

20. "Data" means recorded information regardless of form or characteristic.

21. "Days" means calendar days. In computing any period of time prescribed by these regulations, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.
22. "Definite Quantity Contract" means a contract which requires the contractor to furnish a specified quantity of services, items of tangible personal property or construction at or within a specified time.
23. "Designee" means a representative of a person holding a superior position.
24. "Determination" means the written documentation of a decision of a procurement officer, including findings of fact required to support a decision. A determination becomes part of the procurement title to which it pertains.
25. "Direct or Indirect Participation" means involvement through decision, approval, disapproval, recommendation, formulation of any part of a purchase request, influencing the content of any specification, investigation, auditing or the rendering of advice.
26. "Electronic" includes electric, digital, magnetic, optical, electronic or similar medium
27. "Employee" means an individual receiving a salary, wages or per diem and mileage from ACES, a state agency or a local public body whether elected or not and any non-compensated individual performing personal services as an elected or appointed official or otherwise for ACES, a state agency or a local public body.
28. "Engineering Services" means the performance of any service or creative work, the adequate performance of which requires engineering education, training and experience, and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering studies and review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, process, work systems, projects nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Such practice includes the performance of architectural work incidental to the practice of engineering. "Engineering Services" does not include responsibility for the superintendence of construction, site conditions, operations, equipment, personnel or maintenance of safety in the work place
29. "External Procurement Unit" means any procurement organization not located in this state which, if in this State, would qualify as a state agency or a local public body. Any agency of the United States government is an external procurement unit
30. "Financial Interest" means:
 - 1 holding a position in a business as officer, director, trustee or partner or holding any position in management; or
 - 2 ownership of more than five percent (5%) interest in a business.
31. "Firm Fixed Price Contract" means a contract which has a fixed total price or fixed unit price.
32. "Gratuity" means a payment, loan, subscription, advance, deposit of money, service or anything of more than nominal value, received or promised, unless consideration of substantially equal or greater value is exchanged.
33. "Heavy Road Equipment" means any motor-driven vehicle or apparatus capable of use for earth moving or mixing components which has an aggregate value or price of over one thousand dollars (\$1,000).
34. "Highway Reconstruction" means the rebuilding, altering or repairing of any road, highway, bridge, parking area or related project. "Highway reconstruction" does not include routine maintenance.
35. "Immediate Family" means spouse, children, parents, brothers and sisters.
36. "Indefinite Quantity Contract" means a contract which requires the contractor to furnish an indeterminate quantity of specified services, items of tangible personal property or construction during a prescribed period of time at a definite unit price or at a specified discount from list or catalogue prices.
37. "Invitation for Bids" means documents, including those attached or incorporated by reference, utilized for soliciting sealed bids.
38. "Landscape Architectural Services" means services including, but not limited to consultation, investigation, reconnaissance, research, design, preparation of drawings and specifications and administration of contracts where the dominant purposes of such services are:
 - 1 the preservation or enhancement of land uses and natural features;

- 2 the location and construction of functional approaches for structures, pathways or walkways; or
 - 3 the design of trails, plantings and landscape irrigation. Excluded from the provisions of this section are the services of architects, engineers and land surveyors, as defined in the Procurement Code.
39. "Local public works project: means the project of a local public body which used architectural or engineering services requiring professional services costing twenty-five thousand dollars(\$25,000) or more, or landscape architectural or surveying services requiring professional services cost five thousand dollars (\$5,000) or more, excluding applicable state and local gross receipts taxes.
40. "Local Public Body" means every political subdivision of the State and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code.
41. "Multi-Term Contract" means a contract having a term longer than one year.
42. "Multiple Source Award" means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one bidder or offeror.
43. "Notice of Invitation for Bids" means a document issued by a procurement officer which contains a brief description of the services, construction or items of tangible personal property to be procured, the location where copies of the invitation for bid may be obtained, the location where bids are to be received, the cost, if any, for copies of plans and specifications, the date and place of the bid opening and such other information as the procurement officer deems necessary.
44. "Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, service or construction to ACES, a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitation of the contract, if any.
45. "Price Analysis" means the evaluation of pricing data without analysis of the separate cost components and profit.
46. "Pricing Data" means information containing prices for items that are identical to or substantially similar to those being procured.
47. "Procurement" means:
- 1 purchasing, renting, leasing, lease purchasing or otherwise acquiring items of tangible personal property, services or construction; and
 - 2 all procurement functions, including, but not limited to, preparation of specifications, solicitation of sources, qualification or disqualification of sources, evaluation and award of contract and contract administration.
48. "Procurement Officer" means any person or a designee authorized by ACES to enter into or administer contracts and make written determinations with respect thereto.
49. "Professional Services" means the services of architects, archaeologists, engineers, land surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologist, planners, researchers, construction managers and other persons or businesses providing similar services, which may be designated as such by a determination issued by the ACES purchasing agent.
50. "Purchase Order" means the document issued by the ACES purchasing agent which directs a contractor to deliver items of tangible personal property, services or construction.
51. "Purchase Request" means the document by which a using agency requests that a contract be obtained for a specified service, construction or item of tangible personal property and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation requirements, suggested sources of supply and supporting information.
52. "Qualified Products List" means a list of items of tangible personal property described by model or catalogue number which, prior to the solicitation of competitive sealed bids or competitive sealed proposals, are items the ACES purchasing agent has determined will meet the applicable specifications.
53. "Regulation" means any rule, order or statement of policy, including amendments thereto and repeals thereof, issued by a state agency or a local public body to affect persons, not members or employees of the issuer.
54. "Request for Proposals" means all documents, including those attached for incorporate by reference, used for soliciting proposals.

55. "Responsible Bidder" means a bidder who submits a responsive bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the invitation for bids.
56. "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.
57. "Responsive Bid" means a bid which conforms, in all material respects, to the requirements set forth in the invitation for bids. Material respects of a bid include but are not limited to price, quality, quantity or delivery requirements.
58. "Responsive Offer" or "Responsive Proposal" means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposal include, but are not limited to, price, quality, quantity or delivery requirements.
59. "Secretary" means the secretary of general services.
60. "Services" means the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product, other than reports and other materials which are merely incidental to the required performance. "Services" includes the furnishing of insurance but does not include construction or the services of employees of a state agency or a local public body.
61. "Small Business" means a business, not a subsidiary or division of another business, having an average annual volume for the preceding three fiscal years which does not exceed one million five hundred thousand dollars (\$1,500,000).
62. "Specification" means a description of the physical or functional characteristics or of the nature of items of tangible personal property, services or construction. "Specification" may include a description of any requirement for inspecting or testing, or for preparing items of tangible personal property, services or construction for delivery.
63. "State Agency" means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. "State agency" includes the purchasing division of the general services department and the state purchasing agent but does not include local public bodies.
64. "State Capital Project" means a project of a state agency, not including highway projects of the state highway department, the state educational institutions, the supreme court building commission or local public bodies, which uses architectural, landscape architectural, engineering or land surveying services requiring base professional design services costing fifteen thousand dollars (\$15,000), or more.
65. "State Purchasing Agent" means the director of the purchasing division of the general services department.
66. "Surveying Services" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:
- 1 the measuring and locating of lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volume;
 - 2 the monumenting of property boundaries and the platting and layout of lands and subdivisions thereof;
 - 3 the application of photogrammetric methods used to derive topographic and other data;
 - 4 the establishment of horizontal and vertical controls for surveys for design, topographic surveys including photogrammetric methods, construction surveys for engineering and architectural public works; and
 - 5 the preparation and perpetuation of maps, records, plats, field notes and property descriptions.
67. "Tangible Personal Property" means tangible property, other than real property, having a physical existence, including, but not limited to, supplies, equipment, materials and printed materials.
68. "Using Agency" means any state agency or local public body requiring services, construction or items of tangible personal property.

III. C. COMPETITIVE SEALED BIDDING

III. C. 1. APPLICATION

The provisions of this Chapter apply to every procurement made by competitive sealed bidding, including multi-step sealed bidding.

III. C. 2. COMPETITIVE SEALED BIDS REQUIRED

Competitive sealed bidding is the preferred method for the procurement of items of tangible personal property, construction and services other than professional services. All procurement shall be achieved by competitive sealed bids, except procurement achieved pursuant to the following methods:

- 1 competitive sealed proposals,
- 2 small purchases,
- 3 sole source procurement,
- 4 emergency procurement,
- 5 existing contracts; and
- 6 purchases from anti-poverty program businesses

III. C. 3. INVITATION FOR BIDS

III.C.3.a. General.

The invitation For Bids (IFB) is used to initiate a competitive sealed bid procurement. The invitation for bids shall include the following:

- 1 the specifications for the services, construction or items of tangible personal property to be procured, except that professional services and design and build project delivery system cannot be procured with an IFB;
- 2 all contractual terms and conditions applicable to the procurement including any requirements for complying with applicable preferences provided by law;
- 3 the term of the contract and conditions for renewal or extension, if any; received and the date, time and place of the bid opening; and
- 4 instructions and information to bidders, including the location where bids are to be received and the date, time and place of the bid opening;
- 5 a notice that the IFB may be canceled and that any and all bids may be rejected in whole or in part when it is in the best interest of the state of New Mexico; and:
- 6 a notice that reads substantially as follows: The Procurement Code, 13-1-28 through 13-1-199 NMSA 1978, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

III.C.3.b. Incorporation by reference.

The IFB may incorporate documents by reference, provided that the IFB specifies where such documents can be obtained.

III.C.3.c. Acknowledgement of Amendments.

The invitation for bids shall require written acknowledgment of the receipt of all amendments issued.

III.C.3.d. Evaluation Criteria.

The IFB shall set forth the evaluation criteria that will be used to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria such as discounts, transportation costs and total or life-cycle costs that will affect the bid price shall be objectively measurable. No criteria may be used in bid evaluation that are not set forth in the IFB.

III.C.3.e. Bid Form.

The IFB shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions. A bidder may submit a reasonable facsimile of the bid form. Oral, telephonic and telegraphic bids except as provided in this subsection are invalid and shall not be considered. Telegraphic or bids sent via FAX to a third party and

delivered in a sealed envelope to the location where bids are to be received by the date and time shown in the bid, will be accepted for consideration.

III.C.3.f. Bid Samples and Descriptive Literature.

- 1 "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item, which enables the State to consider whether the item meets its needs.
- 2 "Bid sample" means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.
- 3 Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.
- 4 Bid samples, when required, shall be furnished free of expense to the ACES, and prior to the time set for the opening of bids. Samples not destroyed or mutilated in testing will be returned upon request by mail, express or freight, collect. Each sample must be labeled to clearly show the bid number and the bidder's name.
- 5 The invitation for bids shall state that bid samples or descriptive literature should not be submitted unless expressly requested and that, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature, which are submitted at the bidder's risk, will not be examined or tested, and will not be deemed to vary any of the provisions of the invitation for bids.

III.C.3.g. Bid Timing.

Bidding time is the period of time between the date of distribution of the invitation for bids and the time and date set for receipt of bids. In each case, bidding time shall be set to provide bidders a reasonable time to prepare their bids. In no case shall the bidding time be shorter than the time required for publication.

III. C. 4. PUBLIC NOTICE

Publication. The invitation for bids, or notice thereof, shall be published not less than ten calendar days prior to the date set for the opening of bids. In the case of purchases made by the ACES purchasing agent, the invitation or notice shall be published at least once in a newspaper of general circulation in the area in which the state central purchasing office is located. If there is no newspaper of general circulation in the area in which the state central purchasing office is located, such other notice may be given as is commercially reasonable.

III.C.4.a. These requirements of publication are in addition to any other procedures which may be adopted by the ACES purchasing offices to notify prospective bidders that bids will be received;

III.C.4.b. Bidder lists.

The ACES purchasing agent shall send copies of the notice or invitation for IFB involving the expenditure of more than sixty thousand dollars (\$60,000) 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.

III.C.4.c. Public Availability.

A copy of the invitation for bids shall be made available for public inspection at the ACES purchasing agent's office.

III. C. 5. PRE-BID CONFERENCES

Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an invitation for bids. The conference should be held long enough after the invitation for bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the invitation for bids, unless a change is made by written amendment as provided in these regulations. Furthermore, notice of this fact should be contained in the invitation for bids, if a pre-bid conference was required therein, or in the notice of pre-bid conference.

III. C. 6. AMENDMENTS TO INVITATION FOR BIDS

III.C.6.a. Email.

Amendments to invitations for bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. The amendment shall refer to the portions of the invitation for bids it amends.

III.C.6.b. Distribution.

Amendments shall be sent to all prospective bidders known to have received an invitation for bids.

III.C.6.c. Timeliness

Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time shall be increased to the extent possible in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment

III.C.6.d. Use of Amendments.

Amendments should be used to:

- 1 make any changes in the invitation for bids, such as changes in quantity, purchase description, delivery schedules, and opening dates;
- 2 correct defects or ambiguities; or
- 3 furnish to other bidders information given to one bidder, if such information will assist the other bidders in submitting bids, or if the lack of such information would prejudice the other bidders.

III. C. 7. PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS

III.C.7.a. Procedure.

A bid may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written or telegraphic notice to the location designated in the invitation for bids as the place where bids are to be received.

III.C.7.b. Disposition of Bid Security.

If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

III.C.7.c. Records

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

III. C. 8. LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS

III.C.8.a. Definition.

Any bid, or any withdrawal or modification of a bid, received after the time and date for opening of bids at the place designated for opening, is late.

III.C.8.b. General Rule.

No late bid, late modification, or late withdrawal will be considered, unless received before contract award, and the bid, modification, or withdrawal would have been timely, but for the action or inaction of ACES personnel directly serving the procurement activity.

III.C.8.c. Records.

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

III. C. 9. BID OPENING

III.C.9.a. Receipt.

Upon its receipt, each bid and modification shall be time-stamped, but not opened. It shall be stored in a secure place until the time and date set for the bid opening.

III.C.9.b. No Bids Received.

if no bids are received or if all bids received are rejected a new IFB shall be issued. If upon re-bidding with no change in specifications from the first IFB, the bids received are unacceptable, or if no bids are secured, the ACES purchasing agent may purchase the items of tangible personal property, construction or services in the open market at the best obtainable price.

III.C.9.c. Opening and Recording.

Bids and modifications shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid and each bid item, if appropriate, the names and addresses of the required witnesses, and such other relevant information as may be specified by the state purchasing agent, shall be recorded. The record shall be open for public inspection. Each bid, except those portions for which the bidder has made a written request for confidentiality, shall also be open to public inspection. Any data, which the bidder believes should be kept confidential shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices and makes and models or catalogue number of the items offered, deliveries, and items of payment shall be publicly available at the time of bid opening, regardless of any designation to the contrary.

III.C.9.d. Confidential Data.

If a citizen of this state requests disclosure of data, for which a bidder has made a written request for confidentiality, the procurement officer shall examine the bidder's request and make a written determination that specifies which portions of the bid should be disclosed. Unless the bidder protests under Section 13-1-172 N.M.S.A. 1978, the bid will be so disclosed. The bid shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

III. C. 10. MISTAKES IN BIDS

III.C.10.a. Consideration for Award.

Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized below.

III.C.10.b. General Principle.

Correction or withdrawal of a bid because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible, but only to the extent authorized in this Chapter.

III.C.10.c. Mistakes Discovered Before Opening.

A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid.

III.C.10.d. Conformation of Bid.

When the procurement officer knows, or has reason to conclude, that a mistake has been made in the low bid, such officer should request the low bidder to confirm the bid. Situations in which conformation should be requested include obvious, apparent errors on the face of the low bid or a bid unreasonably lower than the other bids submitted. If the low bidder alleges mistake, the bid may be corrected or withdrawn, if the conditions set forth below, are met

III.C.10.e. Mistakes Discovered After Opening.

This Subsection sets forth procedures to be applied in three situations in which mistakes in bids are discovered after the time and date set for bid opening.

1 *Technical irregularities.* Technical irregularities are matters of form, rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders. That is, when there is no effect on the price, quantity, quality, delivery, or contractual conditions. The procurement officer may waive such irregularities or allow the low bidder to correct them, if either is in the best interest of the State. Examples include the failure of a low bidder to (1) return the number of signed bids required by the invitation for bids; (2) sign the bid, but only if the unsigned bid is accompanied by other material indicating the low bidder's intent to be bound; or (3) acknowledge receipt of an amendment to the invitation for bids, but only if: a) it is clear from the bid that the low bidder received the amendment and intended to be bound by its terms; or b) the amendment involved had no effect on price, quantity, quality, or delivery.

2 *Mistakes where intended correct bid is evident.* If the mistake is where the intended correct bid are clearly evident on the face of a bid document, the bid shall be corrected to the intended correct

bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of a bid document are: typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

3 *Mistakes where intended correct bid is not evident.* A low bidder alleging a material mistake of fact which makes the bid nonresponsive may be permitted to withdraw the bid if: (1) a mistake is clearly evident on the face of the bid document, but the intended correct bid is not; or (2) the low bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

4 *Written determination.* When a bid is corrected or withdrawn, or a correction or withdrawal is denied, the procurement officer shall prepare a written determination showing that the relief was granted or denied in accordance with this Section. Such determination shall be approved or disapproved in writing by the ACES purchasing agent

III. C. 11. BID EVALUATION AND AWARD

III.C.11.a. General.

A contract solicited by competitive sealed bids shall be awarded with reasonable promptness by written notice to the lowest responsible bidder. The invitation for bids shall set forth the requirements and criteria that will be used to determine the lowest responsible bidder. No bid shall be evaluated for any requirement or criterion that is not disclosed in the invitation for bids. Contracts solicited by competitive sealed bids shall require that the bid amount exclude the applicable state gross receipts tax or local option tax but that the contracting agency shall be required to pay the tax including any increase in the tax becoming effective after the contract is entered into. The tax shall be shown as a separate amount on each billing or request for payment made under the contract.

III.C.11.b. Product Acceptability.

The invitation for bids shall set forth all evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for accomplishing any of the following, prior to award:

- 1 inspection or testing of a product prior to award for such characteristics as quality or workmanship;
- 2 examination of such elements as appearance, finish, taste or feel; or
- 3 other examinations to determine whether it conforms with other purchase description requirements.

III.C.11.c. Purpose of Acceptability Evaluation.

The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another's, but only to determine that a bidder's offering is acceptable, as set forth in the invitation for bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected as nonresponsive.

III.C.11.d. Brand-name or Equal Specification.

Where a brand-name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. When bidding an "or equal" the burden of persuasion is on the supplier or manufacturer who has not been specified to convince the procurement officer that their product is, in fact, equal to the one specified. The procurement officer is given the responsibility and judgment for making a final determination on whether a proposed substitution is an "or equal".

III.C.11.e. Determination of Lowest Bidder.

Following determination of product acceptability, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to ACES, in accordance with evaluation criteria set forth in the invitation for bids. Only objectively measurable criteria that are set forth in the invitation for bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, discounts, transportation cost, ownership or life-cycle formulas, and energy efficiency. Evaluation factors

need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates based upon information ACES has available concerning future use.

1 Discounts

1.1 Prompt payment discounts shall not be considered in computing the low bid. Discounts for payment within twenty days shall be considered after award of the contract. The discount time shall not begin until receipt of the services or items of tangible personal property or receipt of the invoice, whichever is later. If testing is required, the discount time shall not begin until completion of the tests or receipt of the invoice, whichever is later.

1.2 Trade discounts shall be considered in computing the low bid. Such discounts may be shown separately but must be deducted by the bidder in calculating the unit price quoted.

1.3 Quantity discounts should be included in the price of the item. Such discounts may not be considered where set out separately, unless the invitation for bids so specifies.

2 Transportation costs shall be considered in computing the low bid. Such costs may be computed into the bid price or be listed as a separate item.

3 Award may be determined by total or life-cycle costing, if so indicated in the invitation for bids. Life-cycle cost evaluation may consider operative, maintenance, and money costs, other costs of ownership and usage, and resale or residual value in addition to acquisition price in determining the award of contracts on the basis of lowest bid cost over the period the item will be used.

4 Evaluation for energy efficiency. Award may be determined by an evaluation consisting of the acquisition price plus the cost of energy consumed over a projected period of use, calculated for each competitive product

III.C.11.f. Restrictions.

Restrictions. Nothing in Section shall be deemed to permit contract award to a bidder submitting a higher quality item than designated in the invitation for bids, if such bidder is not also the lowest bidder, as determined as stated above. Further, policy does not permit negotiations with any bidder.

III.C.11.g. Notification of Award.

Following award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file.

III.C.11.h. Publication of Awards.

Written notice of award shall be sent to the successful bidder. Notice of award shall be posted at the ACES purchasing agent's office.

III. C. 12. STATUTORY PREFERENCES

New Mexico law provides certain statutory preferences to resident businesses and resident manufacturers and to resident construction contractors which must be applied in determining the lowest bidder.

III. C. 13. IDENTICAL LOW BIDS

III.C.13.a. Definition.

Identical low bids are low responsive bids, from responsible bidders, which are identical in price after the application of the preferences referred to above, and which meet all the requirements and criteria set forth in the invitation for bids.

III.C.13.b. Award.

When two or more identical low bids are received, the ACES purchasing agent may:

- 1 award pursuant to the multiple source award provisions;
- 2 award to a resident business if the identical low bids are submitted by a resident business and a nonresident business;
- 3 award to a resident manufacturer, if the identical low bids are submitted by a resident manufacturer and a resident business;
- 4 awards by lottery to one of the identical low bidders; or
- 5 reject all bids and re-solicit bids or proposals for the required services, construction or items of tangible personal property.

III. D. MULTI-STEP SEALED BIDS

III. D. 1. GENERAL.

Multi-step bidding is a variant of the competitive sealed bidding method. This method may be utilized when the ACES purchasing agent makes a determination that it is impractical initially to prepare specifications to support an award based on price, or that specifications are inadequate or are too general to permit full and free competition without technical evaluation and discussion.

III. D. 2. PHASED PROCESS.

Multi-step bidding is a phased process which combines elements of both the competitive sealed proposal method, seeking necessary information or unpriced technical offers in the initial phase; and regular competitive sealed bidding, inviting bidders who submitted technically acceptable offers in the initial phase, to submit competitive sealed price bids on the technical offers in the final phase. The contract shall be awarded to the lowest responsible bidder. If time is a factor, the ACES purchasing agent may require offerors to submit a separate sealed bid during the initial phase to be opened after the technical evaluation.

III. D. 3. PUBLIC NOTICE.

Whenever multi-step sealed bids are used, public notice for the first phase shall be given in accordance with this rule. Public notice is not required for the second phase.

III. E. COMPETITIVE SEALED PROPOSALS

III. E. 1. APPLICATION

The provisions of this Chapter apply to every procurement made by competitive sealed proposals. The provisions of this rule do not apply to the procurement of professional services of architects, engineers, landscape architects and surveyors for state public works projects or local public works projects. Except that when procuring such professional services for state public works projects or local public works projects state agencies and local public bodies shall comply with, competitive sealed qualifications- based proposals.

III. E. 2. GENERAL DISCUSSION

III.E.2.a. Definition.

The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" denotes a judgmental assessment of what is in the state's best interest. The use of competitive sealed bids may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the state's best interest.

III.E.2.b. Proposals offer flexibility.

1 The key element in determining advantageousness is the need for flexibility. The competitive sealed proposals method differs from competitive sealed bidding in two important ways: (1) it permits discussions with competing offerors and changes in their proposals, including price; and (2) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

2 An important difference between competitive sealed proposals and competitive sealed bidding is the finality of initial offers. Under competitive sealed proposals, alterations in the nature of a proposal, and in prices, may be made after proposals are opened. Such changes are not allowed, however, under competitive sealed bidding (except to the extent allowed in the first phase of multi-step sealed bidding). Therefore, unless it is anticipated that a contract can be awarded solely on the basis of information submitted by bidders at the time of opening, competitive sealed bidding is not practicable or advantageous.

3. Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder, which agrees by its bid to perform, without condition or reservation, in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the invitation for bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- 3.1 whether the contract needs to be other than a fixed-price type;
- 3.2 whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- 3.3 whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- 3.4 whether award may need to be based upon a comparative evaluation, as stated in the request for proposals, of differing price, quality, and contractual factors in Services. Quality factors include technical and performance capability and the content of the technical proposal; and
- 3.5 whether the primary consideration in determining award may not be price.

III.E.2.c. When Competitive Sealed Bid is Not Advantageous.

A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the state agency, even though practicable, to use competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

- 1 if prior procurements indicate that competitive sealed proposals may result in a more beneficial contract; and
- 2 whether the factors listed in this Section are desirable in conducting a procurement, rather than necessary; if they are, then such factors may be used to support a determination that competitive sealed bidding is not advantageous.

Before a contract, other than a professional service contract, may be entered into by competitive sealed proposals, the ACES purchasing agent, or a designee shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the ACES.

The ACES purchasing agent may make determinations by category of service or item of tangible personal property that it is either not practicable or not advantageous to procure specified types of services or items of tangible personal property by competitive sealed bidding. Procurements of the specified types of services or items of tangible personal property may then be made by competitive sealed proposals based upon such determination. The ACES purchasing agent may modify or revoke such determination at any time, and such determination should be reviewed for current applicability from time to time.

III. E. 3. REQUEST FOR PROPOSALS

III.E.3.a. Definition.

The request for proposals is used to initiate competitive sealed proposal procurement. The request for proposals shall include the following(Amended 11.09.2018):

- 1 the specifications for the services or items of tangible personal property to be procured;
- 2 all contractual terms and conditions applicable to the procurement;
- 3 instructions and information to Offerors, including the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed;
- 4 all of the evaluation factors, including price, when applicable, and the relative weights to be given to the factors in evaluating proposals;
- 5 a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions;
- 6 a statement of when and how price should be submitted; and
- 7 a NOTICE that states: The Procurement Code, Sections 13-1-28 through 13-1-199 N.M.S.A. 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kick-backs.

III.E.3.b. Incorporation by Reference.

The request for proposals may incorporate documents by reference, provided that the request for proposals specifies where such documents can be obtained.

III.E.3.c. Acknowledgment of Amendments.

The request for proposals shall require written acknowledgment of the receipt of all amendments issued.

III.E.3.d. Form of Proposal.

The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the request for proposals.

III.E.3.e. Proposal Preparation Time.

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

III. E. 4. PUBLIC NOTICE

Public notice of the request for proposals shall be given in the same manner as provided in IFB section of this Policy.

III. E. 5. PRE-PROPOSAL CONFERENCES

Pre-proposal conferences may be conducted in the same manner as provided in IFB section of this Policy. Any such conference should be held prior to submission of initial proposals.

III. E. 6. AMENDMENTS TO REQUESTS FOR PROPOSALS

Amendments should be used to:

- 1 make any changes in the Request for Proposals, such as changes in quantity, purchase description, delivery schedules, and opening dates;
- 2 correct defects or ambiguities; or
- 3 furnish to other respondent's information given to one respondent, if such information will assist the other respondent in submitting proposals, or if the lack of such information would prejudice the other respondent.

After submission of proposals, amendments to the RFP shall be distributed only to short-listed offerors. The short-listed offerors shall be permitted to submit new proposals or to amend those submitted. If in the opinion of the procurement officer or procurement manager, a contemplated amendment will significantly change the nature of the procurement, the RFP shall be canceled.

III. E. 7. MODIFICATION OR WITHDRAWAL OF PROPOSALS (AMENDED 11.09.2018)

Proposals may be modified or withdrawn prior to the established due date. The established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or, if discussions have begun, it is the time and date by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and formal offers.

III. E. 8. LATE PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS

Any proposal, withdrawal, or modification received after the established due date at the place designated for receipt of proposals is late. They may be modified only as specified in the IFB section.

The request for proposals may provide for the waiver of time limits by the ACES procurement offices if good cause shown.

III. E. 9. RECEIPT AND REGISTRATION OF PROPOSALS

Proposals shall not be opened publicly but shall be opened in the presence of one or more witnesses. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a register of proposals shall be prepared which shall include the name of each offeror, a description sufficient to identify the service or item of tangible personal property offered, the names and addresses of the required witnesses, and such other information as may be specified by the ACES purchasing agent. Neither the register of proposals nor the proposals themselves shall be open to public inspection until after award of the contract. Offerors may request, in writing, nondisclosure of confidential data. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. (Amended 11.09.2018)

III. E. 10. EVALUATION OF PROPOSALS

The evaluation shall be based on the evaluation factors and the relative weights set forth in the request for proposals. Numerical rating systems may be used but are not required.

For the purpose of conducting, proposals shall be initially classified as:

- 1 acceptable;
- 2 potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- 3 unacceptable.

Offerors whose proposals are unacceptable shall be so notified promptly.

III. E. 11. PROPOSAL DISCUSSIONS WITH INDIVIDUAL OFFERORS

III.E.11.a. Discussions Authorized.

Discussions or negotiations may be conducted with responsible offerors who submit acceptable or potentially acceptable proposals.

III.E.11.b. Purposes of Discussions.

Discussions are held to:

- 1 promote understanding of ACES requirements and the offerors' proposals; and
- 2 facilitate arriving at a contract that will be most advantageous to ACES, taking into consideration price and the other evaluation factors set forth in the request for proposals.

III.E.11.c. Conduct of Discussions.

If during discussions there is a need for any substantial clarification or change in the request for proposals, the request for proposals shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror. Proposals may be accepted and evaluated without such discussion. This is not an opportunity for the offerors to amend the substance of their proposals.

III.E.11.d. Short List.

All responsible offerors who submit acceptable proposals are eligible for the short list. If numerous acceptable proposals have been submitted, however, the procurement officer or procurement manager may rank the proposals and select the highest ranked proposals for the short list. Those responsible offerors who are selected for the short list are the "short-listed offerors" or "finalist offerors".

III.E.11.e. Competitive negotiations.

Competitive negotiations may be held among the short-listed offerors to:

- 1 promote understanding of a state agency's requirements and short-listed offerors' proposal; and
- 2 facilitate arriving at a contract that will be most advantageous to a state agency taking into consideration the evaluation factors set forth in the RFP;
- 3 except for circumstances and situations otherwise approved by the ACES purchasing agent, negotiations of the relevant terms and conditions as well as any other important factors in an RFP and proposed contract are negotiated prior to award of a contract, not after award.

III.E.11.f. Conduct of Competitive negotiations.

Short-listed offerors shall be accorded fair and equal treatment with respect to any negotiations and revisions of proposals. The procurement officer should establish procedures and schedules for conducting negotiations. If during discussions there is a need for any substantial clarification of or change in the RFP, the RFP shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the short-listed offeror.

III. E. 12. DISCLOSURE

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

III. E. 13. BEST AND FINAL OFFERS

Best and final offers in a request for proposals are strongly discouraged. An offeror's best offer should be included in that offeror's original proposal. No discussion or changes to that offer should be allowed prior to selection of the offeror as the successful offeror unless negotiations are undertaken pursuant to NMACC. After such selection of a successful offeror or offerors (for a multiple award procurement) and before final award, an agency may negotiate with the selected successful offeror(s) for the best possible terms for the ACES, but such negotiations shall not change the successful offeror's or offerors' (for a multiple award procurement)

proposal(s) to the detriment of ACES. Award in this context means the final required ACES signature on the contract(s) resulting from the procurement.

III. E. 14. MISTAKES IN PROPOSALS

III.E.14.a. Modification or Withdrawal of Proposals.

Proposals may be modified or withdrawn.

III.E.14.b. Mistakes Discovered after Receipt of Proposal.

When the procurement officer knows, or has reason to conclude before award, that a mistake has been made, such officer should request the offeror to confirm the proposal. If the offeror alleges a mistake, the proposal may be corrected or withdrawn during any discussions that are held.

If best and final offers are requested in the RFP, between the period of selecting short-listed/finalist offerors and the date set for best and final offers, any short-listed or finalist offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

III.E.14.c. Technical Irregularities.

Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other offerors; that is, when there is no effect on the price, quantity, quality, delivery, or contractual conditions. If discussions are not held, or if best and formal offers upon which award will be made have been received, the procurement officer may waive such irregularities or allow an offeror to correct them, if either is in the best interest of ACES. Examples include the failure of an offeror to:

- 1 return the number of signed proposals required by the request for proposals;
- 2 sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the offeror's intent to be bound; or
- 3 acknowledge receipt of an amendment to the request for proposals, but only if: a) it is clear from the proposal that the offeror received the amendment and intended to be bound by its terms; or b) the amendment involved had no effect on price, quantity, quality, or delivery.

III.E.14.d. Correction of mistakes.

If discussions are not held, or if the best and formal offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

III.E.14.e. Withdrawal of proposals.

If discussions are not held, or if the best and final offers upon which award will be made have been received, an offeror, alleging a material mistake of fact which makes a proposal nonresponsive, may be permitted to withdraw the proposal if:

- 1 the mistake is clearly evident on the face of the proposal, but the intended correct offer is not; or
- 2 the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

III.E.14.f. Determinations required.

When a proposal is corrected or withdrawn, or correction or withdrawal is denied under, the procurement officer shall prepare a written determination showing that the relief was granted or denied in accordance with this Section. Such determination shall be approved or disapproved in writing by the ACES purchasing agent or ACES central purchasing office.

III. E. 15. AWARD: PROFESSIONAL SERVICES

III.E.15.a. Procedure.

An award shall be made to the responsible offeror whose proposal is most advantageous to ACES, taking into consideration the evaluation factors set forth in the RFP. The procurement officer shall make a written determination showing the basis on which an award was found to be most advantageous to ACES based on the factors set forth in the RFP. Award in this context means the final required ACES signature on the contract(s) resulting from the procurement.

III.E.15.b. Publicizing awards.

The procurement manager or procurement officer shall promptly provide all offerors who submitted responsive proposals written notice of the award which notice shall be sent via certified mail, return receipt requested, and shall include the expiration date and time of the protest period, if there was a change from the date and time published in the RFP.

III. E. 16. AWARD: ALL TANGIBLE PERSONAL PROPERTY OR SERVICES

III.E.16.a. Procedure.

The award shall be made by the ACES purchasing agent or designee to the responsible offeror whose proposal is most advantageous to the state agency, taking into consideration the evaluation factors set forth in the RFP. The procurement manager shall make a written determination in the form of an evaluation committee report showing the basis on which the recommended award was found to be most advantageous to the state agency based on the factors set forth in the RFP.

III.E.16.b Publicizing awards.

The procurement manager shall promptly provide all offerors who submitted responsive proposals written notice of the award. The written notice shall be sent via certified mail, return receipt requested, and shall include the expiration date and time of the protest period, if there was a change from the date and time published in the RFP.

III. E. 17. PUBLIC INSPECTION

III.E.17.a General.

After award, any written determinations made pursuant to these rules, the evaluation committee report and each proposal, except those portions for which the offeror has made a written request for confidentiality, shall be open to public inspection. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act. The price of products offered or the cost of services proposed may not be designated as confidential information. Award in this context means the final required ACES signature on the contract(s) resulting from the procurement.

III.E.17.b Confidential Data.

If a request is received for disclosure of data, for which an offeror has made a written request for confidentiality, the ACES purchasing agent shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. If it is determined that an offeror's requested confidential data should be disclosed, that offeror will receive reasonable notice in order to afford the offeror the opportunity to take legal action to prevent the disclosure. Unless the offeror takes legal action to prevent the disclosure, the data will be so disclosed. After award the proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

III. F. SMALL PURCHASES

III. F. 1. APPLICATION.

The provisions of this Chapter apply to the procurement of services, construction or items of tangible personal property having a value not exceeding five thousand dollars (\$5,000). The methods of procurement set forth in Subsections 1.3 through 1.5 of this Section provide alternatives to the competitive sealed bid and competitive sealed proposal methods of procurement. If the procurement methods set forth in Subsections 1.3 through 1.5 of this Section are not used, the competitive sealed bid or competitive sealed proposal methods shall apply.

III. F. 2. PROCUREMENT REQUIREMENTS SHALL NOT BE ARTIFICIALLY DIVIDED.

Procurement requirements shall not be artificially divided so as to constitute a small purchase under this Chapter.

III. F. 3. SMALL PURCHASES OF \$20,000 OR LESS

ACES may procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000) by issuing a direct purchase order to a contractor based upon the best obtainable price and in accordance with any procedures or processes set forth by the ACES purchasing agent.

III. F. 4. SMALL PURCHASES NOT EXCEEDING \$60,000, EXCLUDING PROFESSIONAL SERVICES.

III.F.4.a Quotation to be obtained.

Insofar as it is practical for small purchases of nonprofessional services, construction or items of tangible personal property having a value exceeding twenty thousand dollars (\$20,000) but not exceeding sixty thousand dollars (\$60,000), and in accordance with any procedures or processes set forth by the ACES purchasing agent, no fewer than three businesses shall be solicited via written requests containing the specifications for the procurement to submit written quotations that are recorded and placed in the procurement file. If three written quotes cannot be obtained, the agency shall document the reasons and include the document in the procurement file. Such notations as “does not carry” or “did not return my phone call” do not qualify as a valid quotation. If the lowest quotation is not acceptable, the central purchasing office must issue a written determination as to the reasons for such a decision. These reasons must not be arbitrary or capricious. The written determination becomes a part of the procurement file.

III.F.4.b. Disclosure.

Prior to award, the contents of any response to a quotation shall not be disclosed to any other business from which the same request for quotation is also being solicited. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

III.F.4.c. Award.

Award shall be made to the business offering the lowest acceptable quotation.

III.F.4.d . Records.

The names of the businesses submitting quotations and the date and the amount of each quotation shall be recorded and maintained as a public record.

III. F. 5. SMALL PURCHASES OF PROFESSIONAL SERVICES.

III.F.5.a. Application.

ACES purchasing office may procure professional services having a value not to exceed sixty thousand dollars (\$60,000) except for the services of architects, engineers, landscape architects, or surveyors for state public works projects, in accordance with Subsections B, C, and D of this section.

III.F.5.b Examination of offeror list.

Before contacting any business, ACES purchasing office is encouraged to examine the ACES current list of potential offerors, if any. ACES purchasing office is encouraged to contact at least three businesses for written offers before selecting a contractor.

III.F.5.c Negotiations.

ACES purchasing office shall negotiate a contract for the required services at a fair and reasonable price to ACES.

III.F.5.d Disclosure.

If more than one business is contacted, the contents of the written or oral offer of one business shall not be disclosed to another business until award is made. Award in this context means the final required ACES signature on the contract(s) resulting from the procurement.

III. F. 6. SOLE SOURCE PROCUREMENTS

The provisions of this rule apply to all sole source procurements unless emergency conditions exist.

III.F.6.a Conditions for use.

A contract may be awarded without competitive sealed bids or competitive sealed proposals, regardless of the estimated cost, when the ACES purchasing agent, employing due diligence, determines, in writing, that: (1) there is only one source for the required service, construction or item of tangible personal property; (2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and (3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

III.F.6.b. Request by using agency. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by a written explanation as to why no other will be suitable or acceptable to meet the need. The written explanation shall be made upon a form provided by the ACES purchasing agent and available on-line.

III.F.6.c. Posting. Prior to the award of a sole source procurement contract, the ACES purchasing agent shall: (1) provide the information set forth in statute and listed upon the form made available by the state purchasing agent on the state purchasing agent's website to the department of information technology for posting on the sunshine portal; and (2) forward the same information to the legislative finance committee.

III.F.6.d. ACES central purchasing office, prior to award of a sole source contract, shall post the information required by statute on the local public body website, if one exists.

III.F.6.e. Negotiations.

ACES purchasing agent office shall conduct negotiations, as appropriate, as to price, delivery and quantity, in order to obtain the price most advantageous to the state.

III.F.6.f. Notice; protest.

At least 30 days before a sole source contract is awarded, the ACES purchasing agent or designee shall post notice of the intent to award a sole source contract on its website. A qualified potential contractor who was not awarded a sole source contract may protest to the ACES purchasing agent office. The protest shall be submitted: (Amended 11.09.2018)

(1) in writing; and (2) within 15 calendar days of the notice of intent to award a contract being posted by ACES.

III.F.6.g. Specifications.

The ACES purchasing office shall not circumvent the sole source request and posting and award process by narrowly drafting specifications so that only one predetermined source would satisfy those specifications.

III.F.6.h Records of Sole Source Procurements.

The ACES purchasing agent shall maintain records of sole source procurements for a minimum of three years. The party responsible for the procurement must retain the records. Posting such procurements on the state purchasing agent's website does not remove the central purchasing office's responsibility to maintain these records if the central purchasing office was responsible for the procurement. The record of each such procurement shall be a public record and shall contain: (1) the contractor's name and address; (2) the amount and term of the contract; (3) a listing of the services, construction, or items of tangible personal property procured under the contract; and (4) the justification for the procurement method which shall include any written determinations and written approvals required by any provision of this rule.

III. G. CHAPTER EIGHT EMERGENCY PROCUREMENTS

III. G. 1. APPLICATION.

The provisions of this Chapter apply to every procurement made under emergency conditions that will not permit other source selections to be used.

III. G. 2. DEFINITIONS OF EMERGENCY CONDITIONS.

An emergency condition is a situation which creates a threat to public health, welfare, safety or property such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of such condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which could seriously threaten the functioning of ACES or member charter schools; the preservation or protection of property; or the health and safety of any person.

III. G. 3. SCOPE OF EMERGENCY PROCUREMENTS.

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

III. G. 4. AUTHORITY TO MAKE EMERGENCY PROCUREMENTS.

The ACES purchasing agent, or designee, may make or authorize others to make emergency procurements when an emergency condition arises; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances.

III. G. 5. PROCEDURE.

The procedure used shall be selected to assure that the required services, construction, or items of tangible personal property are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

III. G. 6. WRITTEN DETERMINATION.

A written determination of the basis for the emergency procurement shall be included in the procurement me.

III. G. 7. RECORDS OF EMERGENCY PROCUREMENTS.

The ACES purchasing agent shall maintain records of all emergency procurements for a minimum of three years. The record of each such procurement shall be a public record and shall contain: the contractor's name and address; the amount and term of the contract; a listing of the services, construction, or items of tangible personal property procured under the contract; and conditions necessitating the purchase.

III. H. PROCUREMENT UNDER EXISTING CONTRACTS

III. H. 1. AUTHORIZED.

The ACES purchasing agent may contract for services, construction, or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals as follows:

III.H.1.a. at a price equal to or less than the federal supply contract price, state SPD price, or catalogue price, whichever is lower, and the purchase order adequately identifies The contract relied upon; or

III.H.1.b. with a business which has a current contract or price agreement with the ACES purchasing agent for the services, construction, or item of tangible personal property meeting the same standards and specifications as the items to be procured, if the following conditions are met:

III.H.1.b.i. the quantity purchased does not exceed the quantity which may be purchased under the applicable contract; and

III.H.1.b.ii. the purchase order adequately identifies the contract relied upon.

III. I. ANTI-POVERTY PROGRAM BUSINESSES

III. I. 1. PROCUREMENTS FROM ANTI-POVERTY PROGRAMS.

Notwithstanding the competitive sealed bid requirements of Section 2 of Chapter Three of this Rule, the ACES purchasing agent may negotiate a contract for materials grown, processed or manufactured in this state by small businesses, cooperatives, community self-determination corporations or other such enterprises designed and operated to alleviate poverty conditions and aided by state or federal anti-poverty programs or through private philanthropy.

III. I. 2. WRITTEN DETERMINATION REQUIRED.

Prior to negotiating a contract under this Section, the ACES purchasing agent shall make a written determination of the reasonableness of the price and the quality of the materials and that the public interest will best be served by the procurement.

III. J. CANCELLATION OF SOLICITATIONS AND REJECTION OF BIDS OR PROPOSALS

III. J. 1. APPLICATION.

The provisions of this Chapter shall govern the cancellation of any solicitations, whether issued by the State under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

III. J. 2. POLICY.

An invitation for bids, a request for proposals or any other solicitation may be cancelled or, any or all bids or proposals may be rejected, in whole or in part, when it is in the best interest of ACES.

III. J. 3. NOTICE

Each solicitation issued by ACES shall provide that the solicitation may be cancelled and that any and all bids or proposals may be rejected, in whole or in part, when it is in the best interest of ACES.

III.J.3.a. Prior to Opening .

As used in this Section, "opening" means the date set for opening of bids, receipt of technical offers in sealed bidding, or receipt of proposals in competitive sealed proposals.

III.J.3.b. Prior to opening, a solicitation may be cancelled, in whole or in part, when the ACES purchasing agent makes a written determination that such action is in the ACES best interest for reasons including, but not limited to: (Amended 11.09.2018)

1. ACES no longer requires the services, construction, or items of tangible personal property;
- 2 ACES no longer can reasonably respect to fund the procurement; or
- 3 proposed amendments to the solicitation would significantly change the nature of the procurement

III.J.3.c. When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation shall identify the solicitation; briefly explain the reason for cancellation; and where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar services, construction, or items of tangible personal property.

III.J.3.d. After Opening .

After opening, but prior to award, all bids or proposals may be rejected, in whole or in part, when the ACES purchasing agent makes a written determination that such action is in ACES best interest for reasons including, but not limited to: all of the bids and proposals are nonresponsive; the services, construction, or items of tangible personal property being procured are no longer required; ambiguous or otherwise inadequate specifications were part of the solicitation; the solicitation did not provide for consideration all factors of significance to ACES. A notice of rejection should be sent to all businesses that submitted bids or proposals, and it shall conform to Paragraph 4.1.4 of this Section.

III. J. 4. REJECTION OF INDIVIDUAL BIDS OR PROPOSALS.

Reasons for Rejection.

III.J.4.a. Bids.

As used in this Subsection, "bid" means any bid submitted in competitive sealed bidding or in the second phase of multi-step sealed bidding and includes quotations under this Rule. Reasons for rejecting a bid include, but are not limited to:

- 1 the business that submitted the bid is not responsible;
- 2 the bid is not responsive; or
- 3 the service, construction, or item of tangible personal property offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications, or permissible alternates, or other acceptability criteria set forth in the invitation for bids.

III.J.4.b Proposals.

As used in this Subsection, "proposal" means any offer submitted in response to any solicitation, including an offer under this Rule, except a bid as defined above. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the ACES stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include, but are not limited to:

- 1 the business that submitted the proposal is not responsible as determined under Chapter Twelve of this Rule;
- 2 the proposal is not responsive; or
- 3 the proposed price is clearly unreasonable.

III.J.4.c. Written Determination Required.

A written determination which contains the reasons for the rejection of an individual bid or proposal shall be prepared by the ACES purchasing agent and made a part of the procurement file.

III.J.4.d. "ALL OR NONE" BIDS OR PROPOSALS

Limitation of Bid or Proposal. Only when provided by the solicitation may a bid, or proposal, limit acceptance to the entire bid or proposal offering. Otherwise, such bids or proposals shall be deemed to be nonresponsive. If the bid or proposal is properly so limited, ACES shall not reject part of such bid or proposal and award on the remainder.

III. K. RESPONSIBILITY OF BIDDERS AND OFFERORS

III. K. 1. RESPONSIBILITY OF BIDDERS AND OFFERORS (AMENDED 11.09.2018)

III.K.1.a. Application.

A determination of responsibility or not responsibility shall be governed by this Chapter.

III.K.1.b. Standards for bidders.

Factors to be considered in determining whether the standard of responsibility has been met include whether a bidder has:

- 1 submitted a responsive bid;
- 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 invitation for bids; (Amended 11.09.2018)
- 3 a satisfactory record of performance;
- 4 a satisfactory record of integrity;
- 5 qualified legally to contract with ACES;
- 6 supplied all necessary information and data in connection with the inquiry concerning responsibility.

III.K.1.c. Standards for offerors.

Factors to be considered in determining whether the standard of responsibility has been met include whether an offeror has:

- 1 submitted a responsive proposal;
- 2 adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services or items of tangible personal property described in the proposal;
- 3 a satisfactory record of performance;
- 4 a satisfactory record of integrity;
- 5 qualified legally to contract with ACES;
- 6 supplied all necessary information and data in connection with the inquiry concerning responsibility.

III.K.1.d. Ability to Meet Standards.

The bidder or offeror may demonstrate the availability of adequate financial resources, production or service facilities, personnel and experience by submitting, upon request:

- 1 evidence that such contractor possesses such necessary items;
- 2 acceptable plans to subcontract for such necessary items; or
- 3 a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

III.K.1.e. Inquiry by Procurement Officer.

Before awarding a contract, the procurement officer must be satisfied that the bidder or offeror is responsible. Therefore, the bidder or offeror shall supply information and data requested by the procurement officer concerning the responsibility of the bidder or offeror. The unreasonable failure of a bidder or offeror to promptly supply information or data in connection with such an inquiry is grounds for a determination that the bidder or offeror is not responsible.

III.K.1.f. Determination Required.

If a bidder or offeror, who otherwise would have been awarded a contract, is found not to be a responsible bidder or offeror, a written 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 ACES purchasing agent. The written determination shall be made part of the procurement file and a copy of the determination shall be sent promptly to the nonresponsive bidder or offeror.

III. L. PREQUALIFICATION OF BIDDERS OR OFFERORS

III. L. 1. GENERAL

A business may be prequalified by the ACES purchasing agent as a bidder or offeror for particular types of services, construction or items of tangible personal property. In order to prequalify, a business shall submit a statement of qualifications, and such other information as may be required, in the form prescribed by the ACES purchasing agent.

The ACES purchasing agent shall allow businesses to pre-qualify and shall maintain current lists of those businesses which have prequalified. Mailing lists of potential bidders or offerors shall include, but shall not be limited to, such prequalified businesses.

III. L. 2. PREQUALIFICATION IS NOT THE SAME AS RESPONSIBILITY

The fact that a business has been prequalified does not represent a finding of responsibility.

III. M. COOPERATIVE PROCUREMENT

III. M. 1. COOPERATIVE PROCUREMENT

Any state agency or local public body may either participate in, sponsor or administer a cooperative procurement agreement for the procurement of any services, construction or items of tangible personal property with any other state agency, local public body or external procurement unit in accordance with an agreement entered into under the Joint Powers Agreements Act.

The general services department and the department of finance and administration shall notify the state purchasing agent on or before January 1 of each year of the cooperative procurement agreements entered into by state agencies with local public bodies or external procurement units during the preceding fiscal year.

III. M. 2. CONTRACTS AND PRICE AGREEMENTS

The ACES-purchasing agent may cooperate by agreement with the state purchasing agent in obtaining contracts or price agreements, and such contracts or price agreements shall apply to purchase orders subsequently issued under the agreements.

The ACES purchasing agent shall, upon the request of a member, procure a price agreement for the requested services, construction, or items of tangible personal property.

III. N. MULTIPLE SOURCE AWARD

III. N. 1. LIMITATIONS ON USE.

A multiple source award may be made when two or more bidders or offerors are necessary for adequate delivery or service. Multiple source awards shall not be made when a single award will meet the needs of ACES without sacrifice of economy or service. Awards shall be limited to the least number of suppliers in one geographical area necessary to meet the requirements of ACES. A multiple source award shall be based upon the lowest responsible bid or proposal received in each geographical area.

III. N. 2. DETERMINATION REQUIRED.

The ACES purchasing agent shall make a written determination setting forth the reasons for a multiple source award.

III. O. PROTESTS

III. O. 1. APPLICABILITY.

The provisions of this Chapter apply to all protests filed with ACES purchasing agent unless otherwise provided by contract.

III. O. 2. RIGHT TO PROTEST.

Any bidder or offeror, who is aggrieved in connection with a solicitation or award of a contract, including sole source procurement, may protest to the ACES purchasing agent.

III. O. 3. FILING OF PROTEST.

III.O.3.a. Protest must be written.

III.O.3.b. Contents shall include:

- 1 The name and address of the protestant
- 2 The solicitation number
- 3 A statement of the grounds of the protest
- 4 Supporting exhibits
- 5 Evidence of documents to substantiate an claim unless not available including supporting exhibits unless not available within the filing time in which case the expected availability date shall be indicated, and specify the ruling requested from the ACES purchasing office.

III.O.3.c. Pleadings.

No formal pleading is required to initiate a protest, but protests should be concise, logically arranged, and direct.

III.O.3.d Time limit.

Protests shall be submitted within 15 calendar days after knowledge of the facts or occurrences giving rise to the protest. Any person or business that has been sent written notice of any fact or occurrence is presumed to have knowledge of the fact or occurrence.

III. O. 4. PROCUREMENTS AFTER PROTEST.

III.O.4.a. In the event of a timely protest, the ACES purchasing agent shall not proceed further with the procurement unless the ACES purchasing agent makes a written determination that the award of the contract is necessary to protect substantial interests of ACES. Such written determination should set forth the basis for the determination.

III.O.4.b. A procurement shall not be halted after a contract has been awarded merely because a protest has been filed. After a contract has been awarded, the ACES purchasing office may, in its sole discretion, halt a procurement in exceptional circumstances or for good cause shown.

III. O. 5. PROCEDURE.

III.O.5.a. Upon the filing of a timely protest, the ACES purchasing agent shall give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied.

III. O.5.b. The protestant and every business that receives notice will automatically be parties to any further proceedings before the ACES purchasing office. In addition, any other person or business may move to intervene at any time during the course of the proceedings. Intervention will be granted upon a showing of a substantial interest in the outcome of the proceedings. Interveners shall accept the status of the proceedings at the time of their intervention; in particular, they must abide by all prior rulings and accept all previously established time schedules. The ACES purchasing agent, and all employees thereof, are not parties to the proceedings.

III.O.5.b.c. The ACES purchasing agent may take any action reasonably necessary to resolve a protest. Such actions include, but are not limited to, the following:

- 1 issue a final written determination summarily dismissing the protest;
- 2 obtain information from the staff of the ACES central purchasing office;
- 3 require parties to produce for examination information or witnesses under their control;
- 4 require parties to express their positions on any issues in the proceedings;
- 5 require parties to submit legal briefs on any issues in the proceeding;

- 6 establish procedural schedules;
- 7 regulate the course of the proceedings and the conduct of any participants;
- 8 receive, rule on, exclude or limit evidence;
- 9 take official notice of any fact that is among the traditional matters of official or administrative notice; witnesses.
- 10 conduct hearings; and
- 11 take any action reasonably necessary to compel discovery or control the conduct of parties to comply with discovery requests.

III. O. 6. HEARINGS.

III.O.6.a. Hearings will be held only when the ACES purchasing agent determines that substantial material factual issues are present that cannot be resolved satisfactorily through an examination of written documents in the record. Any party may request a hearing, but such requests shall be deemed denied unless specifically granted.

III.O.6.b. Hearings, when held, should be as informal as practicable under the circumstances, but the ACES purchasing agent has absolute discretion in establishing the degree of formality for any hearing. In no event is the ACES purchasing agent required to adhere to formal rules of evidence or procedure.

III. O. 7. RESOLUTION.

III.O.7.a. The ACES purchasing agent shall promptly issue a written determination relating to the protest. The determination shall:

- 1 state the reasons for the action taken; and
- 2 inform the protestant of the right to judicial review of the determination.

III.O.7.b. A copy of the written determination shall be sent immediately by certified mail, return receipt requested, to each of the parties.

III. O. 8. RELIEF.

III.O.8.a. Prior to award.

If, prior to award, the ACES purchasing agent makes a written determination that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be canceled.

III.O.8.b. After award.

1 No fraud or bad faith. If, after an award, the ACES purchasing agent makes a written determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has not acted fraudulently or in bad faith:

- (a) the contract may be ratified, affirmed or revised to comply with law, provided that a written determination is made that doing so is in the best interest of the state; or
- (b) the contract may be terminated, and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.

2 Fraud or bad faith.

If, after an award, the ACES purchasing agent makes a written determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has acted fraudulently or in bad faith, the contract shall be canceled.

III.O.8.c. Relief not allowed.

The ACES purchasing agent shall not award money damages or attorneys' fees.

III. O. 9. MOTION FOR RECONSIDERATION.

III.O.9.a Motion.

A motion for reconsideration of a written determination may be filed by any party or by any using agency involved in the procurement. The motion for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification of the determination is deemed warranted, specifying any errors of law made, or information not previously considered.

III.O.9.b. When to file.

A motion for reconsideration shall be filed not later than seven calendar days after receipt of the written determination. A copy of the written response shall be sent immediately by certified mail, return receipt requested, to each of the parties.

III. O. 10. DESIGNEE.

III.O.10.a. Designation.

At any point during a protest proceeding, the ACES purchasing agent may appoint a designee to preside over the proceeding. The designee will have all of the powers of this rule except the power to issue a written determination. The designee only has authority to recommend a resolution to the ACES purchasing agent.

III.O.10.b. Who may be designated.

Any person, other than the procurement officer, procurement manager or other person not directly involved in the procurement may serve as a designee.

III.O.10.c. Recommended written determination.

A designee shall present a recommended written resolution to the ACES purchasing agent and mail a copy to each of the parties. No party may appeal from the recommended resolution of the designee.

III.O.10.d. Action by ACES purchasing office.

The ACES purchasing agent shall approve, disapprove or modify the recommended resolution of the designee in writing. Such approval, disapproval or modification shall be the written determination. Any party may file a motion for reconsideration of the written determination.

III. O. 11. FINAL DETERMINATION.

III.O.11.a. No motion for reconsideration.

In those proceedings in which no motion for reconsideration is filed, the written determination issued pursuant shall be the final determination for purposes of the time limits for seeking judicial review.

III.O.11.b. Motion for reconsideration.

In those proceedings in which a motion for reconsideration is filed, the written response to the motion issued shall be the final determination for purposes of the time limits for seeking judicial review.

III. O. 12. COPIES OF COMMUNICATIONS.

III.O.12.a. Copies to be provided to parties.

Each party to a protest proceeding shall certify that it has provided every other party with copies of all documents or correspondence addressed or delivered to the ACES purchasing agent.

III.O.12.b. Ex parte communications.

No party shall submit to the ACES purchasing agent ex parte, any material, evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in a protest.

III. O. 13. COUNTING DAYS.

In computing any period of time the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

III. O. 14. CHIEF PROCUREMENT OFFICER REGISTRATION AND CERTIFICATION.

III.O.14.a. Registration.

On or before January 1, 2014, and every time thereafter that a chief procurement officer is hired, ACES shall provide to the state purchasing agent the name of the state agency's or local public body's chief procurement officer and information identifying the ACES purchasing office, if applicable.

III.O.14.b. Information required. The information required from the state agency or local public body shall be submitted to the state purchasing agent through a database established by the state purchasing agent and

made available on the state purchasing division's website. All required information must be submitted using this method.