

**INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE NO. 02-272**

**AN ORDINANCE REPEALING CHAPTER 31, ARTICLE VII, SECTION 31-232 OF THE LOS ALAMOS COUNTY CODE OF ORDINANCES RELATED TO CONTRACT CLAIMS**

**WHEREAS**, the Incorporated County of Los Alamos ("County"), pursuant to State law, has adopted its own procurement code as found in Chapter 31 of the Los Alamos County Code of Ordinances ("Procurement Code"); and

**WHEREAS**, as part of the Procurement Code, the County Council, in Article VII, has set out various ordinances governing policies and procedures related to protest of or to solicitations and award of contracts (§ 31-231), contract disputes and claims (§ 31-232), remedies for solicitations in violation of law (§ 31-233), and remedies related to procurement violations (§ 31-234); and

**WHEREAS**, in 2008, the County's Procurement Code was moved and renumbered from Chapter 20, Finance, to its own Chapter, Chapter 31; and

**WHEREAS**, Section 31-232 of the Procurement Code provides dispute resolution procedures for claims arising under contract, including disputes related to breach of contract, mistake, misrepresentation, and other causes for contract modification or rescission; and

**WHEREAS**, it is unclear whether the County, besides in 2016, has ever utilized this Code Section to resolve contract dispute concerns; and

**WHEREAS**, the process established by this Section is contrary to general contracting principals of law where contract disputes, especially to determine breach of contract, would be a matter of law for the courts of the State of New Mexico to hear and decide; and

**WHEREAS**, in 2016 a contractor, following a claim by the County's Department of Public Utilities, enacted the processes of this Section; and

**WHEREAS**, after proceeding through the Section's process, it was found by the County Attorney and County Purchasing Agent that this Section, § 31-232, as written inherently creates complexities for staff and Council that could impinge on the legal rights of both the County and disputing contractor; and

**WHEREAS**, the State's Procurement Code, NMSA 1978, §§ 13-1-1 through 13-1-199, has no similar provision allowing for resolution of contract disputes through agency hearing and determination; and

**WHEREAS**, County staff and the County Attorney, in review of other similarly sized municipalities and counties within the State do not have a comparable contract dispute ordinance; and

**WHEREAS**, the Council has determined that repeal of Section 31-232 is in the best interest of the citizens of the County.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS:**

**Section 1.** Chapter 31, Article VII, Section 31-232 is hereby repealed and the remaining sections of Article VII are renumbered as follows:

~~Sec. 31-232. — Contract claims. —~~

~~Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission. Within 15 calendar days of the time the contractor knows or should have known of the facts and circumstances giving rise to a claim the following procedure shall apply:~~

- ~~(a) Notice of claim to the purchasing agent. All claims by a contractor against the county relating to a contract except bid protests shall be submitted in writing to the purchasing agent for decision. The contractor may request a conference with the purchasing agent on the claim.~~
- ~~(b) Notice to the contractor of the purchasing agent's decision. The decision of the purchasing agent shall be issued in writing within 15 calendar days of claim notice and immediately mailed, or otherwise furnished, to the contractor. The decision shall state reasons for the decision reached, and shall inform the contractor of its appeal rights under subsection (d) of this section.~~
- ~~(c) Failure to render timely decision. If the purchasing agent does not issue a written decision regarding any contract controversy within 15 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.~~
- ~~(d) Appeal. Any appeal to the county council of an adverse decision shall be made by filing with the county manager's office within 15 calendar days after the decision has been received by the aggrieved person. The proceeding before the county council shall be de novo.~~
- ~~(e) Decisions by council final; exception. A decision of the county council under this section shall be final and conclusive unless a protestant seeks judicial review in the state First Judicial District Court within 30 days of the receipt of notice of the decision of the county council.~~

~~{Ord. No. 02-098, § 2, 12-2-2008; Ord. No. 02-256, § 56, 7-7-2015}~~

**Sec. 31-233232. - Remedies for solicitations or awards in violation of law.**

- (a) Prior to bid opening or closing date for receipt of proposals. If, prior to the bid opening or the closing date for receipt of proposals, the purchasing agent, after consultation with the county attorney, determines that a solicitation is in violation of applicable law or regulation then the solicitation shall be canceled by the purchasing agent or revised to comply with applicable law.
- (b) Prior to award. If, after bid opening or the closing date for receipt of proposals, the purchasing agent, after consultation with the county attorney, determines that a solicitation or a proposed award of a contract is in violation of applicable law then the solicitation or proposed award shall be canceled by the purchasing agent.

(c) After award. If, after an award, the purchasing agent, after consultation with the county attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:

(1) If neither the purchaser nor the person awarded the contract has acted fraudulently or in bad faith:

a. The contract or invoice may be ratified and affirmed or approved for payment by council for any amount or the county manager or utilities manager, as applicable, for amounts under \$200,000.00, provided that it is determined that doing so is in the best interests of the county; or

b. The contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

(2) If either the purchaser or the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void by the purchasing agent, if such action is in the best interests of the county.

(Ord. No. 02-098, § 2, 12-2-2008; Ord. No. 02-256, § 56, 7-7-2015; Ord. No. 02-####, § 1, 2017)

Sec. 31-~~234~~233. - Procurement violations.

The county shall have no obligation for payment of goods, services, or construction that were improperly or unlawfully procured. The purchasing agent, with the approval of the county manager, is authorized to develop procedures for preventing or handling procurement violations.

(Ord. No. 02-098, § 2, 12-2-2008; Ord. No. 02-256, § 56, 7-7-2015; Ord. No. 02-####, § 1, 2017)

Secs. 31-~~235~~234—31-260. - Reserved.

**Section 5. Effective Date.** This Ordinance shall become effective thirty (30) days after notice is published following its adoption.

**Section 6. Severability.** Should any section, paragraph, clause or provision of this ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

**Section 7. Repealer.** All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**COUNCIL OF THE INCORPORATED  
COUNTY OF LOS ALAMOS**

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**David Izraelevitz**  
**Council Chair**

**ATTEST: (SEAL)**

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**Naomi D. Maestas**  
**Los Alamos County Clerk**