

**THE BOARD OF COUNTY COMMISSIONERS
OF LUNA COUNTY**

ORDINANCE NO. 82

**AN ORDINANCE ESTABLISHING A FIVE PERCENT (5%) LUNA COUNTY
PROCUREMENT PREFERENCE; REQUIRING A LUNA COUNTY PREFERENCE
CERTIFICATE ESTABLISHING ELIGIBILITY FOR THE PREFERENCE;
ESTABLISHING APPLICATION REQUIREMENTS; PROVIDING FOR PROTEST OF
DENIAL OF CERTIFICATES; ESTABLISHING PENALTIES.**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LUNA
COUNTY THAT:**

Section One. Short Title. This Ordinance may be cited as the Luna County Procurement Preference Ordinance or the "Procurement Preference."

Section Two. Applicability. This Ordinance shall apply to procurement by Luna County under State law and the County's Procurement Regulations. This Ordinance shall not apply to procurement by Luna County that is governed, pursuant to a grant agreement, by the federal acquisition regulations, 48 CFR Part I *et seq.*

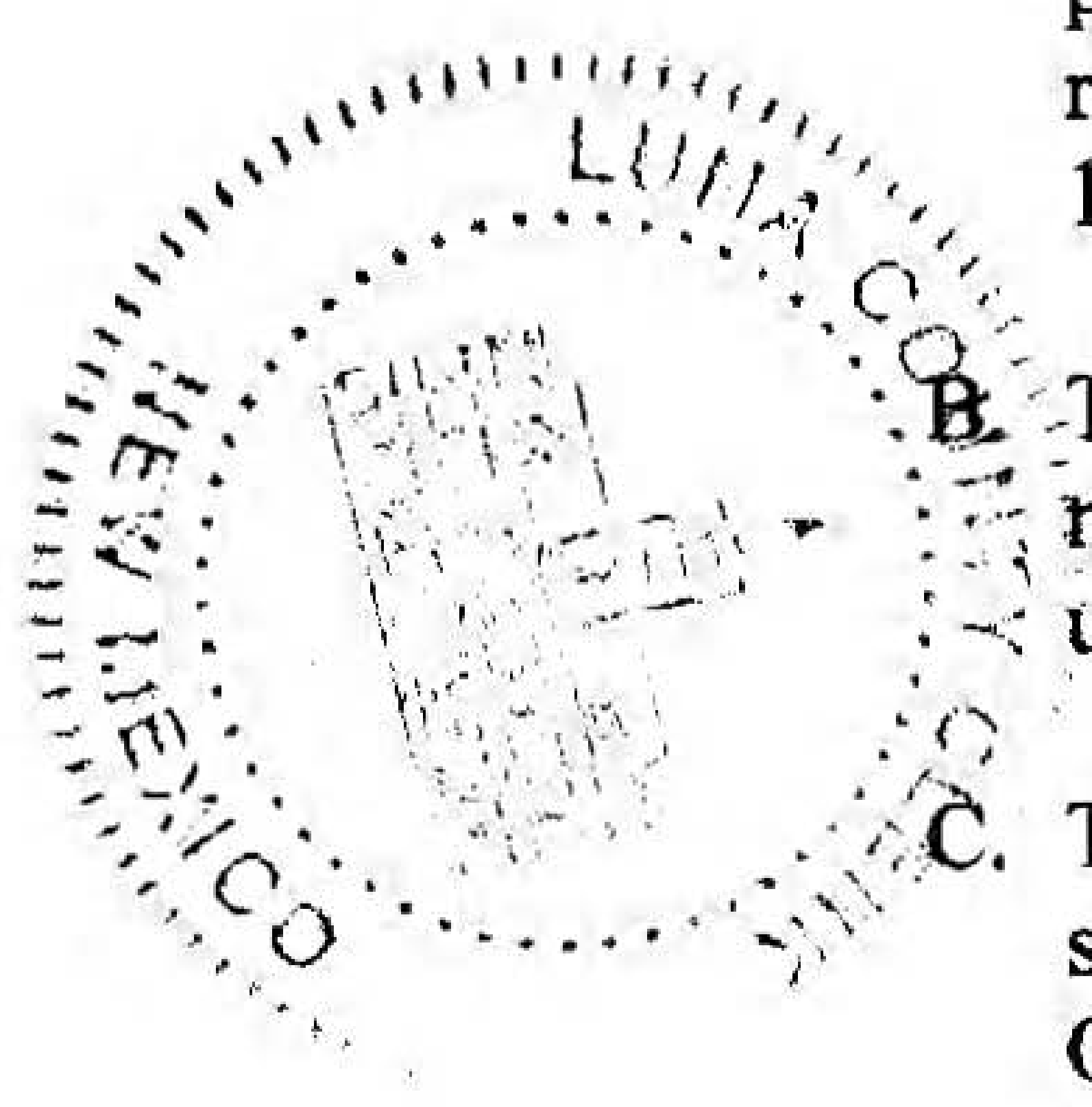
Section Three. Definitions.

A. The phrase "Luna County Business" shall mean a business that holds a current Luna County Business Certificate at the time of application for a preference certificate pursuant to this Ordinance (or the appropriate municipal business license, if located within a municipality) that has its primary and permanent office or business location within the exterior boundaries of Luna County for at least one (1) year preceding the submission of an application for a Luna County procurement preference, and which, if a foreign corporation, has filed a unitary return pursuant to the Corporate Income and Franchise Tax Act and NMSA 1978, § 7-2A-8.3 or as amended.

B. The phrase "Luna County Business Certificate" or "Business Certificate" shall mean the certificate issued to a business engaged in business within the unincorporated limits of Luna County.

C. The Phrase "Luna County Preference Certificate" or "Preference Certificate" shall refer to the certificate authorized pursuant to Section Five of this Ordinance.

D. The phrase "Luna Budget/Procurement Director or "Procurement Manager" shall mean the person appointed to serve as the County's Procurement Manager.



Section Four. Luna County Procurement Preference Established.

- A. A Luna County procurement preference is hereby established, as described in this Ordinance.
- B. When Luna County procures services using competitive sealed proposals pursuant to NMSA 1978, sec. 13-1-111(1975) or as amended, an offer submitted by a Luna County Business shall be deemed to receive five percent (5%) of the overall totals points awarded in connection with the evaluation of the proposals.
- C. When Luna County procures goods or services and pursuant to NMSA 1978 13-1-21 or as amended, a Luna County Business shall be deemed to receive a five percent (5%) preference towards the overall award.
- D. In applying the preference provided in this Ordinance, the Luna County Procurement Preference Certificate shall be applied in addition to any other preference required by Law.

Section Five. Eligibility for the Luna County Procurement Preference. A Luna County Business shall be eligible to utilize the preference established in this Ordinance only when presenting, prior to or at the time established in the solicitation for receipt of proposals or competitive sealed bids, a Luna County Preference Certificate issued by the Procurement Manager.

Section Six. Obtaining a Preference Certificate; Application Required.

- A. A Luna County Business may obtain a Preference Certificate by filing an application with the Procurement Manager.
- B. The application shall be completed on a form provided by the Procurement Manger that contains a sworn affidavit from the president or owner of the business setting forth each of the following:
 - 1. The name, address, telephone number, and name of the business and its registered agent (if applicable);
 - 2. If a corporation, information that the corporation is registered to do business in the State of New Mexico and is in good standing and provides a certificate of good standing from New Mexico Taxation & Revenue Department;

3. If the business is a foreign corporation, information that the business is registered to do business in the State of New Mexico and is in good standing and provides a certificate of good standing from New Mexico Taxation & Revenue Department;
 4. A copy of a valid business registration to do business in Luna County (or a copy of the appropriate municipal business license, if located within a municipality within Luna County);
 5. A statement that the business has maintained its primary and permanent office or business location within the exterior boundaries of Luna County for at least one (1) year preceding the submission of the application; and
 6. If a foreign corporation, copies of the most recent State and federal tax returns applicable to the business
- C. The Procurement Manager shall issue a Preference Certificate if the application demonstrates, to the satisfaction of the Procurement Manager, that the business holds a current Business Certificate at the time of application for a preference certificate pursuant to this Ordinance (or the appropriate municipal business license, if located within a municipality), that the business has its primary and permanent office or business location within the exterior boundaries of Luna County and has maintained its primary and permanent office or business location within the exterior boundaries of Luna County for at least one (1) consecutive year preceding the submission of the application and if a foreign corporation, has filed a unitary return pursuant to the Corporate Income and Franchise Tax Act and NMSA 1978, § 7-2A-8.3 or as amended.

Section Seven. Denial of Certificate; Protest; Revocation.

- A. If the Purchasing Manager determines that an applicant is not eligible for certification, the Purchasing Manager shall deny the application and shall issue a notice of denial.
- B. A business whose application for a Preference Certificate is denied may protest the denial to the Procurement Manager in conformity with the protest procedures of the Purchasing Regulations.
- C. If facts are developed by the Procurement Manager that information provided by an applicant seeking a Preference Certificate has provided inaccurate or

misleading information that resulted in the issuance of a certificate, the Procurement Manager shall revoke the certificate and notify the applicant.

Section Eight. Expiration of Certificate. A Preference Certificate shall be valid for two (2) years from date of its issuance. A new application will be required every two years to determine eligibility for the Procurement Preference.

Section Nine. Penalties. Knowingly providing false or misleading information on an application for a Procurement Preference shall constitute a violation of this Ordinance and shall be punished as set forth in NMSA 1978, Sec. 4-37-3 (1975) or as amended; knowingly providing false or misleading information on an application for a Procurement Preference may also expose the person providing such information to additional criminal penalties as provided by State law.

PASSED AND ENACTED THIS 14th DAY OF June, 2012.

THE BOARD OF COUNTY COMMISSIONERS
LUNA COUNTY, NEW MEXICO

By: J. Jay Spivey
J. Jay Spivey, Commission Chairman

ATTEST:

Karen Smyer
Karen Smyer
Luna County Clerk

APPROVED AS TO FORM:

Randy Knudson
Luna County Attorney



LUNA COUNTY-NM
KAREN SMYER, CLERK
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