

NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH
DISABILITIES

Adopted: April 12, 2017 (Revised 3/23/20, 8/14/19, 10/11/17, and 11/15/17)

PROCEDURE FOR CENTRAL NONPROFIT AGENCY
DIRECT DISTRIBUTION OF SMALL CONTRACTS

I. Purpose

The purpose of the State Use Act, NMSA 1978, Section 13-1C-1 through Section 13-1C-7, is to “encourage and assist persons with disabilities to achieve maximum personal independence through useful and productive employment by ensuring an expanded and constant market for services delivered by persons with disabilities, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and entitlements.” To help achieve this purpose, this procedure establishes a process to allow for the Central Nonprofit Agency to “facilitate the equitable distribution” of small contracts as authorized by 2.40.5.10 NMAC, by Section A of 2.40.5.12 NMAC, and by Section B of 2.40.5.14 NMAC. As authorized by 13-1C-5(A)(6) of the State Use Act, the New Mexico Council for Purchasing from Persons with Disabilities adopts this procedure to facilitate the equitable distribution of contracts by providing a method for the Central Nonprofit Agency to directly distribute qualifying small contracts.

II. Background

The New Mexico Council for Purchasing from Persons with Disabilities has adopted the practice of discussing and approving all State Use Act contracts during Council meetings, regardless of the size of the contract. This has resulted in the Council and Central Nonprofit Agency spending time and public resources approving relatively small contracts. By authorizing the Central Nonprofit Agency to directly distribute small contracts, the overall process is made more efficient and productive. This procedure was first adopted in April of 2017, and revised in October and November of 2017 to permit direct distribution in cases of immediate and urgent need. Given the successful implementation of this procedure, the Council decided that it was reasonable and appropriate to expand the scope of contracts that are eligible for direct distribution by the Central Nonprofit Agency, and the Council approved that expanded authority in August of 2019. On March 23, 2020, the Council responded to the Coronavirus emergency by increasing the amount of contracts that may be directly distributed in cases of state or national emergencies.

III. Eligible Contracts

1. For a contract to be eligible for direct distribution by the Central Nonprofit Agency, all of the following shall apply:

- a. The total amount of the contract to be directly distributed shall not exceed \$2,500, unless there has been a determination of immediate and urgent need as set forth in Section IV, or a determination of a state or national emergency as set forth in Section V.
- b. The state agency or local public body shall not have divided the contract or contracts into amounts of \$2,500 or less so as to permit direct distribution.
- c. The services to be provided under the contract must have been determined suitable by the New Mexico Council for Purchasing from Persons with Disabilities.
- d. The state agency or local public body and the Central Nonprofit Agency must mutually agree that the services to be provided under the contract are suitable, and the state agency or local public body must have signed the Contract Proposal Acceptance Form.
- e. The services to be provided under the contract must be within the "fair market price" range as determined by the New Mexico Council for Purchasing from Persons with Disabilities.
- f. Provision of the services under the contract must otherwise not create a significant adverse impact upon the state agency or local public body, as set forth in Section F of 2.40.5.10 NMAC, and as defined by the "Procedure for Determining and Responding to Significant Adverse Impact and Verification of Fair Market Price."
- g. The contract for the services to be provided must be in compliance with the Governmental Conduct Act, including the provisions at 10-16-7 that pertain to contracts with public officers of the state, employees of the state, or family members of public officers of the state or employees of the state.
- h. The contract for the services to be provided shall otherwise be in compliance with the State Use Act, NMSA 1978, Section 13-1C-1 through Section 13-1C-7.

IV. Direct Distributions in Cases of Immediate and Urgent Need

There may be instances in which an agency or local public body may have an immediate and urgent need for services that is greater than \$2,500. In such instances, the Central Nonprofit Agency may directly distribute a contract up to \$7,500. While contracts may be granted tentative Chair approval under Section G of 2.40.5.10 NMAC, the nature of the immediate and urgent need may be such that the contract will be substantially or wholly performed by the next meeting of the Council. For a contract to be eligible for direct distribution by the Central Nonprofit Agency in cases of immediate and urgent need, all of the following shall apply:

- a. The total amount of the contract to be directly distributed in cases of immediate and urgent need shall not exceed \$7,500.
- b. The state agency or local public body shall indicate that there is an immediate and urgent need for the service and that it is in the public interest to proceed in an expedited fashion; and
 - 1. That proceeding in an expedited fashion may result in avoiding a financial loss to the agency or local public body; or
 - 2. That proceeding in an expedited fashion is necessary for the safe, proper, and efficient operation of the agency or local public body.
- c. The services to be provided under the contract must have been determined suitable by the New Mexico Council for Purchasing from Persons with Disabilities.
- d. The state agency or local public body and the Central Nonprofit Agency must mutually agree that the services to be provided under the contract are suitable, and the state agency or local public body must not have indicated a disagreement in the Contract Proposal Acceptance Form.
- e. The services to be provided under the contract must be within the “fair market price” range as determined by the New Mexico Council for Purchasing from Persons with Disabilities.
- f. Provision of the services under the contract must otherwise not create a significant adverse impact upon the state agency or local public body, as set forth in Section F of 2.40.5.10 NMAC, and as defined by the “Procedure for Determining and Responding to Significant Adverse Impact and Verification of Fair Market Price.”
- g. The contract for the services to be provided must be in compliance with the Governmental Conduct Act, including the provisions at 10-16-7 that pertain to contracts with public officers of the state, employees of the state, or family members of public officers of the state or employees of the state.
- h. The contract for the services to be provided shall otherwise be in compliance with the State Use Act, NMSA 1978, Section 13-1C-1 through Section 13-1C-7.

V. Direct Distributions in Cases of State or National Emergency

There may be instances in which an agency or local public body may have an emergency need for services that is greater than \$7,500. In such instances, the Central Nonprofit Agency may directly distribute a contract up to \$20,000. While contracts may be granted tentative Chair approval under Section G of 2.40.5.10 NMAC, the nature of the emergency may be such that the contract will be substantially or wholly performed by the next meeting of the Council. For a contract to be eligible for direct distribution by the Central Nonprofit Agency in cases of emergency, all of the following shall apply:

- a. The total amount of the contract to be directly distributed in cases of emergency shall not exceed \$20,000.
- b. The state agency or local public body shall indicate that there is an emergency need for the service and that it is in the public interest to proceed in an expedited fashion; and
 1. That proceeding in an expedited fashion may result in avoiding a financial loss to the agency or local public body; or
 2. That proceeding in an expedited fashion is necessary for the safe, proper, and efficient operation of the agency or local public body due to the emergency.
- c. The services to be provided under the contract must have been determined suitable by the New Mexico Council for Purchasing from Persons with Disabilities.
- d. The state agency or local public body and the Central Nonprofit Agency must mutually agree that the services to be provided under the contract are suitable, and the state agency or local public body must not have indicated a disagreement in the Contract Proposal Acceptance Form.
- e. The services to be provided under the contract must be within the “fair market price” range as determined by the New Mexico Council for Purchasing from Persons with Disabilities.
- f. Provision of the services under the contract must otherwise not create a significant adverse impact upon the state agency or local public body, as set forth in Section F of 2.40.5.10 NMAC, and as defined by the “Procedure for Determining and Responding to Significant Adverse Impact and Verification of Fair Market Price.”
- g. The contract for the services to be provided must be in compliance with the Governmental Conduct Act, including the provisions at 10-16-7 that pertain to contracts with public officers of the state, employees of the state, or family members of public officers of the state or employees of the state.
- h. The contract for the services to be provided shall otherwise be in compliance with the State Use Act, NMSA 1978, Section 13-1C-1 through Section 13-1C-7.

VI. Multiple Small Contracts

It is possible that the state agency or local public body procuring the services may have multiple small contracts directly distributed by the Central Nonprofit Agency, and that the sum of those multiple contracts may exceed \$2,500. It is also possible that the state agency or local public body procuring services in cases of immediate and urgent need may in unusual circumstances need to have multiple contracts directly distributed by the Central Nonprofit Agency, and that the sum of those multiple contracts may exceed \$7,500. It is also possible that the state agency or local public body procuring services in cases of emergency may in extraordinary circumstances need to have multiple contracts directly distributed by the Central Nonprofit Agency, and that the sum of those multiple small contracts may exceed \$20,000. Such occurrences shall not be a violation of this procedure

so long as there is no intentional effort to divide contracts into smaller portions so as to permit direct distribution under this procedure.

VII. Transparency and Accountability

So as to provide for maximum transparency and accountability, all Contracts directly distributed by the Central Nonprofit Agency shall be placed on the agenda of the New Mexico Council for Purchasing from Persons with Disabilities. This placement on the agenda shall take place as soon as reasonably possible, allowing for compliance with the Open Meetings Act requirement that agendas be posted at least 72 hours in advance of the meeting. Should there be insufficient time to place the contract on the agenda immediately following the Central Nonprofit Agency direct distribution of the contract, the contract shall be placed on the agenda for the next meeting. The agenda shall identify the following:

- a. The amount and nature of the contract.
- b. The state agency or local public body procuring the services.
- c. The Qualified Individual or Community Rehabilitation Program providing the services.

APPROVED BY THE NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES THIS 23rd DAY OF March, 2020.



Lisa Dignan, Chair

New Mexico Council for Purchasing from Persons with Disabilities