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Albuquerque, NM 87110

December 9, 2015

New Mexico Legislative Council Service

Suite 411 State Capitol
490 Old Santa Fe Trail
Santa Fe, NM 87501

TO: New Mexico Legislative Council Service

FROM: Lawrence O. Maxwell, Chair, New Mexico Council for Purchasing from Persons with Disabilities

SUBJECT: FY 2015 Annual Report

Enclosed is the Fiscal Year 2015 Annual Report for the State Use Act. The Purpose of the State Use Act [13-1C-1 NMSA 1978] 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.



2015 ANNUAL REPORT

Source: 13-1C-4 NMSA 1978

Status: Active

Functions & Responsibilities

Paraphrasing 13-1C-2 NMSA 1978

The purpose of the State Use Act (and council) 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...

Appointment Process

13-1C-4 NMSA 1978

The Council shall be composed of the following nine members:

- (1) The state purchasing agent or the agent's designee;
- (2) two persons, appointed by the governor who represent state agencies that purchase significant amounts of goods and services from the private sector, or their designees;
- (3) a person, appointed by the governor, who is a state-employed vocational rehabilitation counselor and who is familiar with employment needs of persons with disabilities and with current pricing and marketing of goods and services, and
- (4) two persons with disabilities, a person who is familiar with employment needs of persons with disabilities and with current pricing and marketing of goods and services, and two persons who represent community rehabilitation programs that provide employment services to persons with disabilities, all selected by mutual agreement of the persons appointed in Paragraphs (1), (2), and (3) of this subsection.

Terms of Service

13-1C-4 NMSA 1978

Council members shall be appointed for three-year terms. Vacancies shall be filled in the same manner as for original appointments. A member appointed to fill a vacancy shall serve for the remainder of the term for that vacancy. Council members shall continue to serve beyond the expiration of their terms until new members are appointed.

Current Titles & Names

COUNCIL MEMBERS	TERM	APPOINTED BY
<p>Lawrence O. Maxwell, Chair NM General Services Department - State Purchasing Division PO Box 6850 Santa Fe, NM 87502 <i>Lawrence.maxwell@state.nm.us</i> 505.827.0472</p>	<p>No Term Limits Membership includes State Purchasing Agent or designee</p>	<p>Governor Appointed Required by State Use Act, 13-1C-4 A. (1)</p>
<p>Secretary Tom Clifford NM Department of Finance & Administration 407 Galisteo, Suite #180 Santa Fe, NM 87501 <i>Tom.clifford@state.nm.us</i> 505.827.4985</p>	<p>No Term Limits</p>	<p>Governor Appointed</p>
<p>Secretary Darryl Ackley NM Department of Information Technology PO Box 22550 Santa Fe, NM 87502-2550 <i>Darryl.ackley@state.nm.us</i> 505.827.0000</p>	<p>No Term Limits</p>	<p>Governor Appointed</p>
<p>Veronica De Leon-Dowd* Interim Executive Director Division of Vocational Rehabilitation <i>Veronica.deleondowd@state.nm.us</i> 505.954.8589</p>	<p>No Term Limits Membership includes Vocational Rehabilitation Representative</p>	<p>Governor Appointed Required by State Use Act</p>
<p>Mike Kivitz President/CEO, Adelante Development Center 3900 Osuna NE Albuquerque, NM 87109 <i>mkivitz@goadelante.org</i> 505.341.7102</p>	<p>Community Rehabilitation Program (CRP) Representative 3/1/2009 - 3/1/2012 Three Years</p>	<p>Appointed by Council Required by State Use Act</p>
<p>Pam Lillibridge 4534 Sandalwood Dr. Las Cruces, NM 88011 <i>Pam3717@comcast.net</i> 575.644.2107</p>	<p>Community Rehabilitation Program (CRP) Representative 3/1/2009 - 3/1/2012 Three Years</p>	<p>Appointed by Council Required by State Use Act</p>

*Position vacated 6/22/15

2015 Annual Report

COUNCIL MEMBERS (con't)	TERM	APPOINTED BY
Roger Newall Veteran's Affairs Liaison, Mayor's Office - City of Albuquerque PO Box 1293 Albuquerque, NM 87103 <i>rnewall@cabq.gov</i> 505.768.3000	9/19/2014 - 9/19/2017 Three Years	Appointed by Council
Greg Trapp Executive Director - NM Commission for the Blind 2200 Yale Blvd. SE Albuquerque, NM 87106 <i>Greg.trapp@state.nm.us</i> 505.841.8844	9/19/2014 - 9/19/2017 Three Years	Appointed by Council
Lisa Dignan, M.Ed., CI and CT Director of Community Engagement NM Commission for Deaf and Hard of Hearing 505 Marquette Ave NW, Suite 1550 Albuquerque, NM 87102 <i>Lisa.Dignan@state.nm.us</i> 505.383.6530	9/19/2014 - 9/19/2017 Three Years	Appointed by Council

Scheduled FY 2015 Meetings

- August 13, 2014 – *No Quorum*
- September 19, 2014 – *Quorum*
- October 8, 2014 – *Quorum*
- November 19, 2014 – *Quorum*
- December 10, 2014 - *Quorum*
- January 14, 2015 – *Quorum*
- February 13, 2015 – *Quorum*
- March 11, 2015 – *Quorum Lost, Reconvened with Quorum on March 24, 2015*
- April 8, 2015 - *Quorum*
- May 13, 2015 – *No Quorum*
- June 4, 2015 – *No Quorum*
- June 22, 2015 – *Special Meeting, Quorum*

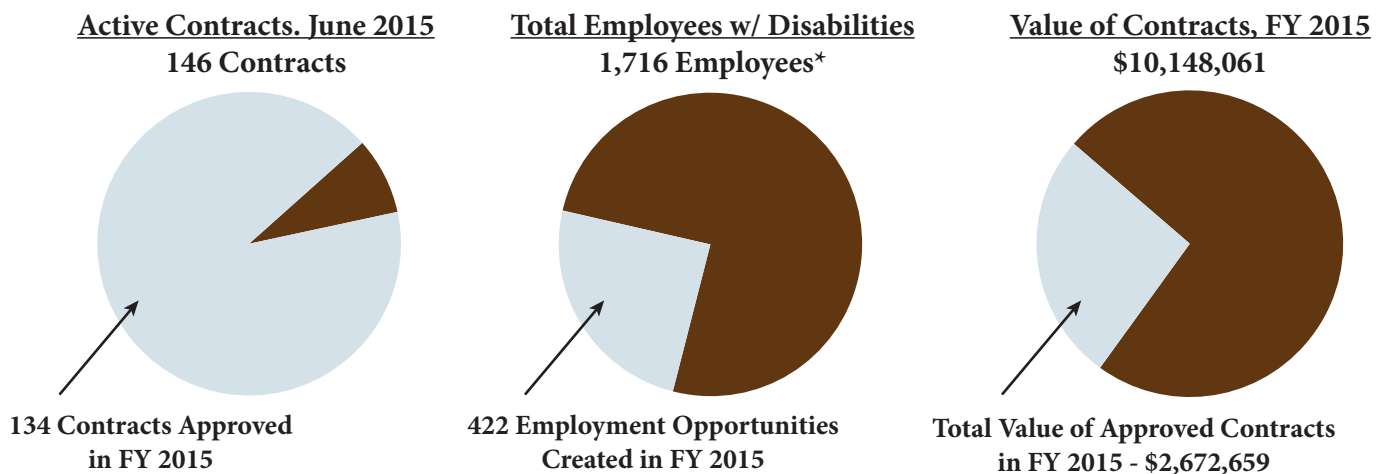


New Mexico Council Activity

- During its January 14, 2015 meeting the Council ratified its Open Meeting Act Annual Resolution and By-Laws. During this meeting the ratification of the Vice Chair and Secretary occurred (*attached*).
- During its February 13, 2015 meeting the Council ratified the Fair Market Pricing Range and its Adverse Impact Policy (*attached*).
- During its June 22, 2015 meeting the Governor Appointed Representative for the Division of Vocational Rehabilitation was vacant due to Ms. Veronica De Leon-Dowd's retirement from government service.

State Use Program Success

During the 2015 fiscal year, the New Mexico Council for Purchasing from Persons with Disabilities was able to create new employment opportunities for 422 New Mexicans with disabilities working at 20 Community Rehabilitation Programs (CRP) and member businesses. Through meaningful employment opportunities like these, New Mexicans with disabilities are empowered to become productive, tax-paying citizens which positively impacts the state of New Mexico and its local communities. Below is a summary of the State Use Program success during that time period.



*Oct. '14 - Sept. '15

The New Mexico Council for Purchasing from Persons with Disabilities will continue providing useful and productive employment opportunities for New Mexicans with Disabilities in the 2016 fiscal year.

NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES

OPEN MEETINGS RESOLUTION

December 10, 2014

WHEREAS, the Open Meetings Act, Section 10-15-1 NMSA 1978, states that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any board, council, commission, administrative adjudicatory body or other policymaking body of any state or local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

WHEREAS, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs shall be held only after reasonable notice to the public; and

WHEREAS, the Open Meetings Act requires the New Mexico COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES to determine annually what constitutes reasonable notice of its public meetings;

NOW, THEREFORE, BE IT RESOLVED by the New Mexico COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES (COUNCIL), meeting in regular session this 10th day of December, 2014, that:

1. All meetings shall be held as indicated in the meeting notice, except that meetings may be canceled due to a lack of a quorum, due to inclement weather, or for other appropriate reasons.
2. Regular Meetings: Notice of regular meetings shall be given at least ten days in advance of the meeting
3. Special Meetings: Notice shall be given at least three days in advance of any special meeting.
4. Emergency Meetings: Emergency meetings may be called by the Chair upon at least twenty-four hours' notice, or by the Vice Chair should the Chair be unavailable, or by a majority request of at least 7 members, unless threat of personal injury or property damage requires less notice. Emergency meetings will be called only under unforeseen circumstances that demand immediate action to protect the health, safety and property of citizens, or of the State of New Mexico, or of local public bodies from substantial financial loss.
5. Rule Hearings: Notice of rulemaking proceedings shall be given at least thirty days prior to the hearing date.

6. For purposes of regular meetings described in paragraph 2 of this resolution, notice requirements are met if notice of the date, time, place, and how to obtain a copy of the agenda is published in a newspaper of general circulation and placed on the web page of the CENTRAL NONPROFIT AGENCY OR ON THE WEB PAGE OF THE STATE PURCHASING DIVISION. Notice shall also be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings. The meeting agenda shall be made available and placed on the web page of the central nonprofit agency or the State Purchasing Division at least seventy-two (72) hours prior to the meeting.

7. For purposes of special meetings described in paragraph 3 of this resolution, notice shall be placed on the web page of the central nonprofit agency or of the State Purchasing Division, and notice shall also be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings. The meeting agenda shall be made available and placed on the web page of the central nonprofit agency or the State Purchasing Division at least seventy-two (72) hours prior to the meeting.

8. For purposes of emergency meetings described in paragraph 4 of this resolution, notice requirements are met if notice of the date, time, place, and a copy of the agenda is made reasonably available under the circumstances, which may include posting at the office of the central nonprofit agency or the State Purchasing Division, placement on the web page of the central nonprofit agency or the State Purchasing Division, and using other appropriate methods. Notice also shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.

9. For the purpose of rule hearings described in paragraph 5 of this resolution, notice requirements shall be met if notice of the date, time, place, subject of the hearing, the manner in which interested persons may present their views, and where copies of the proposed regulations may be obtained, is published in a newspaper of general circulation and the New Mexico Register. In addition, the notice of hearing shall be posted at the office of the central nonprofit agency and State Purchasing Division, posted on the web page of the central nonprofit agency or State Purchasing Division, and placed using other appropriate methods. Notice also shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.

10. All notices shall include information on how persons with disabilities may request a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service as may be required by the Americans with Disabilities Act.

11. Should technical or other problems occur that prevent placement of notice on the web page of the central nonprofit agency or the State Purchasing Division, the COUNCIL

shall engage in activities to provide notice through other available and appropriate methods, such as through physical postings, by email distribution, and by posting on social media.

12. The COUNCIL may close a meeting to the public only if the subject matter of such discussion or action is excepted from the open meeting requirement under the Open Meetings Act.

(a) If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the COUNCIL taken during the open meeting. The authority for the closed meeting and the subjects to be discussed shall be stated with reasonable specificity in the motion to close. The vote of each member on the motion to close shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the closed meeting.

(b) If a closed meeting is to be conducted when the COUNCIL is not in an open meeting, the closed meeting shall not be held until appropriate public notice is given.

(c) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.

(d) Except as provided by the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote in an open public meeting.

Passed by the New Mexico COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES this 10th day of December, 2014.

Larry Maxwell
Chairman

NEW MEXICO Council for Purchasing from Persons with Disabilities

BYLAWS

Adopted: December 10, 2014

ARTICLE I

PURPOSE

The purpose of these bylaws is to provide for the proper and efficient administration of the New Mexico Council for Purchasing from Persons with Disabilities, hereafter "Council," and to further the purposes set forth in the State Use Act.

ARTICLE II

MEMBERSHIP

The membership of the Council shall be comprised of persons appointed as set forth in the State Use Act.

ARTICLE III

OFFICERS AND EXECUTIVE COMMITTEE

Officers shall be elected at the first meeting of each calendar year, or as may otherwise be necessary to fill vacant positions. The officers shall consist of a Chairperson, a Vice-Chairperson, and a Secretary. The officers shall constitute an executive committee.

As allowed by the Open Meetings Act, the Chairperson or the Executive Committee may be authorized to make decisions pending action by the full Council, or be delegated certain duties and responsibilities.

ARTICLE IV

COMMITTEES

The chair may appoint such standing and ad hoc committees as may be necessary to further the business of the council, provided that no committee shall constitute a quorum as set forth in the State Use Act. The committees may also include persons who are not Council members, but who have subject-matter or other expertise.

ARTICLE V

MEETINGS

The Council shall meet at least four times annually, and all meetings shall be conducted in accordance with the Open Meetings Act. A quorum for conducting business shall consist of a minimum of seven members as set forth in the State Use Act. Should a quorum not be established, the members present may dissolve into a committee, provided that no vote or action may be taken that would require a quorum.

ARTICLE VI

PARLIAMENTARY PROCEDURE

The current edition of Robert's Rules of Order shall serve as a general guide for the conducting of meetings. However, the failure to act in accord with Robert's Rules of Order shall not negate or nullify any action of the Council.

ARTICLE VII

ATTENDING BY PHONE OR OTHER SIMILAR COMMUNICATIONS EQUIPMENT

As allowed by the Open Meetings Act, a member of the Council may attend by conference telephone or other similar communications equipment, including Internet-based technologies. However, such attendance is allowed only when it is otherwise difficult or impossible for the member to attend, and only at the discretion of the Chairperson. In addition, each member thus participating must be identified when speaking, all participants must be able to hear each other at the same time, and the public must be able to hear any member who speaks during the meeting.

ARTICLE VIII

CONDUCT

The members of the Council are subject to the terms and provisions of the Governmental Conduct Act, including but not limited to the following provisions of the Governmental Conduct Act:

- A. Council members shall treat Council membership as a public trust, using the powers and resources of membership only to advance the public interest and not to obtain personal benefits or pursue private interests incompatible with the public interest.
- B. Council members shall conduct themselves in a manner that justifies the confidence placed in him by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.
- C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No Council member may request or receive, and no person may offer a Council member, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act.

E. A Council member shall disqualify himself from engaging in any official act directly affecting his financial interest.

ARTICLE IX

AMENDMENTS

These by laws may be amended by a majority vote of the Council members present at any regular or special meeting at which a quorum is present, provided a written notice of the proposed change has been provided to each member of the Council at least five days prior to the meeting.

LARRY MAXWELL
CHAIRMAN

New Mexico Council for Purchasing from Persons with Disabilities

Adopted: January 14, 2015

PROCEDURE for Determining and Responding to Significant Adverse Impact and Verification of Fair Market Price

The following procedure modifies and amends all prior procedures adopted by the New Mexico Council for Purchasing from Persons with Disabilities.

I. PURPOSE

The purpose of this procedure is to facilitate the proper and efficient administration of the State Use Act. The purpose of the State Use Act 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.”

II. SUITABILITY

The state agency or public body and the Central Nonprofit Agency are encouraged to work cooperatively to determine when there are State use eligible services that are suitable for provision by persons with disabilities. A service may not be considered to be State use eligible when there are external requirements that proscribe the use of a specific provider, when it is unsuitable for some other reason, or when there would be a significant adverse impact to a state agency or public body. When there is mutual agreement between the Central Nonprofit Agency and the state agency or public body that a particular service does not constitute a State use eligible service, the state agency or public body may proceed to have the service provided through the Procurement Code.

III. SIGNIFICANT ADVERSE IMPACT

It is anticipated that most situations that would result in a determination of a significant adverse impact could be resolved by discussion between the Central Nonprofit Agency and the state agency or public body. In the event a state agency or public body believes an adverse impact situation may exist, discussions between the state agency or public body and the Central Nonprofit Agency are encouraged. However, despite sincere efforts to reach agreement, there may be times when there is no mutual agreement between the state agency or public body and the Central Nonprofit Agency as to the suitability of State use eligible services, or when seeking such agreement would be futile or needlessly time delaying. In such circumstances, it may be appropriate to seek

a determination of significant adverse impact directly from the State purchasing Division. In such cases, the following procedure shall be used:

1. Significant Adverse impact may be established upon a showing of any one of the following:

a. Proceeding under the State Use Act would result in a condition that would cause a violation of an applicable state or federal law, regulation, rule, or guidance.

b. Proceeding under the State Use Act would result in a condition that would cause a breach of an applicable standard of care, would create an unacceptable level of risk or liability, or would result in a violation of an applicable code of conduct or rule of professional responsibility.

c. Proceeding under the State Use Act would cause an agency or public body to cease working with a contractor with which it has had a prior business relationship, resulting in a material loss of subject matter expertise, specific skills, institutional memory, situational awareness, or long-term business continuity. The agency or public body may submit documentation of discussions or meetings with State Use Act members to the State Purchasing Division as a part of the written statement of the significant adverse impact.

d. Proceeding under the State Use Act would cause an agency or public body to not be able to obtain the professional services of a contractor that possessed a unique and highly specialized ability in a technical, engineering, scientific, or legal field. The agency or public body may submit documentation of discussions or meetings with State Use Act members or the Central Nonprofit Agency to the State Purchasing Division as a part of the written statement of the significant adverse impact.

e. Proceeding under the State Use Act would create a significant adverse impact due to an excessive cost to the agency or public body. Exclusive of the Central Nonprofit Agency fee, any cost that is more than 10 percent than what would be incurred should the agency or public body procure the services through the Procurement Code shall presumptively constitute substantial evidence of a significant adverse impact, such 10 percent hereby being verified as the Fair Market Price range. In the event of a determination of a significant adverse impact based on excessive cost, the report to the New Mexico Council for Purchasing from Persons with Disabilities shall include the initial determination of excessive cost, and a report of the final cost incurred by the agency or public body. The agency or public body may submit documentation of discussions or meetings with the Central Nonprofit agency or State Use Act members to the State Purchasing Division as a part of the written statement of the significant adverse impact. The agency or public body may also submit quotes for the same service obtained from businesses that are not State Use Act members.

f. Proceeding under the State Use Act would create a significant adverse impact in the event of a natural, man-made, or other type of emergency or disaster that requires an agency or public body to take immediate action to preserve property or protect the health and safety of the public. In the event of such an emergency, the State Purchasing Division may waive the procedures set forth herein, and immediately certify the agency or public body to proceed pursuant to the provisions of the procurement code that are applicable to such emergency or disaster situations.

g. Proceeding under the State Use Act would create some other form of a significant adverse impact, provided that there is substantial evidence of an actual significant adverse impact upon an agency or public body.

2. An agency or public body that seeks to assert significant adverse impact may do so by submitting a written statement of the significant adverse impact to the State Purchasing Division for review. The written statement must include a description of the harm or damage that would arise if the contract proceeded through the State Use Act, and must be made under penalty of perjury pursuant to 28 U.S.C. Section 1746.

3. The harm or damage that would arise as a result of the significant adverse impact must be actual, and must not be speculative, remote, or de minimis.

4. The State Purchasing Division shall review the statement, and determine if there is a significant adverse impact. Should the State Purchasing Division conclude that there is substantial evidence of such a significant adverse impact, it shall issue a written determination of the adverse impact, notify the agency or public body, and notify the Central Nonprofit Agency.

5. In the case of a determination of significant adverse impact, the contract shall proceed pursuant to the procurement code.

6. All determinations of significant adverse impact shall be reported to the New Mexico Council for Purchasing from Persons with Disabilities, which shall on a periodic basis review such determinations to ensure compliance with the State Use Act.

APPROVED BY THE NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES THIS 14TH DAY OF JANUARY, 2015.

Larry Maxwell
Chair

Statutory Authority

- (1) determine which services provided by persons with disabilities are suitable for sale to state agencies and local public bodies;
- (2) establish, maintain and publish a list of all the services identified in Paragraph (1) of this subsection. The council shall periodically review and revise this list as products or services are added or removed. The council shall make the list available to all purchasing officials of state agencies and local public bodies;
- (3) verify the fair market prices of the services identified in Paragraph (1) of this subsection and periodically revise the fair market prices in accordance with changing market conditions to ensure that services offer the best value for state agencies and local public bodies. In verifying the fair market value of services, the council shall consider amounts being paid for similar services purchased by the federal government, the state and local public bodies and by private businesses, and the actual cost of performing the services at a community rehabilitation program, taking into consideration the benefits associated with employing persons with disabilities;
- (4) establish a procedure to certify eligible community rehabilitation programs and qualified individuals that have services suitable for procurement by state agencies and local public bodies that will be placed on the list established in Paragraph (2) of this subsection;
- (5) establish a procedure for approval of a central nonprofit agency that shall hold contracts, facilitate the equitable distribution of orders for services to be procured by state agencies and local public bodies and market approved services to state agencies and local public bodies;
- (6) establish procedures for the operation of the approved central nonprofit agency, including a fee structure for its services;
- (7) address any other matter necessary to the proper administration of the State Use Act; and
- (8) ensure that the work provides opportunities for integration with nondisabled persons, fair pay and adds value to the service provided.

Regulatory Authority

2,40.5.10 ESTABLISHING AND VERIFYING FAIR MARKET PRICE:

A. The council shall verify and revise the fair market prices on an as needed basis.

2.40.5NMAC

B. The council shall revise the fair market prices in accordance with the changing market conditions to ensure that contracted services offer the best value for state agencies and local public bodies.

C. The pricing standard for services should be as close as possible to prevailing market price not including the central nonprofit agency fee.

D. The council shall set the price within a range submitted by the central nonprofit agency taking into consideration the benefits associated with employment of persons with disabilities.

E. Fair market price may be established based on:

- (1) prices paid for similar services by federal, state and local public bodies and by private businesses; or
- (2) the actual cost of performing the services at a community rehabilitation program, determined by use of a council approved cost analysis worksheet, taking into consideration the benefits associated with employing persons with disabilities; or
- (3) any other accepted business method acceptable to the council.

F. When considering a contract award, in order to ensure that services offer the best value for state agencies and other public bodies, the central nonprofit agency shall determine suitability of individual contracts to be provided under each service, including, but not necessarily limited to:

- (1) external requirements that proscribe the use of a specific provider, such as:
 - (a) contracts which must be awarded to providers who are sanctioned by the federal corporation for national and community services;
 - b) mandated projects that must be awarded to an area agency on aging pursuant to federal law;
- (2) significant adverse impact to a state agency or local public body, when contracting for professional services, resulting in the loss of content knowledge associated with confidential, proprietary, or attorney/client privileged information; in such instances the government's central purchasing office shall notify the central nonprofit in writing prior to contract award.

G. The council chairperson shall have the authority to give tentative approval for specific contracts for work by the central nonprofit agency, between council meetings, subject to ratification by the full council at its next scheduled meeting, when time is of the essence for the purchaser.

H. The council shall establish procedures for verifying fair market price, which shall be published on the central nonprofit agency's website.