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SPD POLICY MEMO #FY10-006

NM State Use Act Implementation

The New Mexico State Use Act (13-1C-1 NMSA 1978), effective June 17, 2005, was put in place by the Legislature and the Governor to encourage and assist persons with disabilities to achieve maximum personal independence through useful and productive employment. The act is intended to ensure 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. The State Use Act applies to services only and does not address goods.

Consistent with the State Use Act and its associated rule (2.40.5 NMAC), the following information and guidance is provided to all Executive Branch state agencies ("agency"):

Per statute, the application of the State Use Act is carried out by a combination of a governing body and a non-profit organization. The non-profit organization is charged with day to day administration.

The governing body for implementation of the NM State Use Act is the "New Mexico Council for Purchasing from persons with disabilities" or "Council." Per statute, the membership is made up of the State Purchasing Agent (SPA) and a mixture of Governor and Council appointed persons, to include persons with one or more disabilities. Among other things, the Council approves the Fair Market Value of the available services as well as certifying the potential providers. The Council meets approximately monthly.

The non-profit organization is properly called the "Central Non-Profit Agency" or "CNA." The CNA for the State of New Mexico, selected through a competitive procurement, is New Mexico Abilities. Their web site can be found at www.nmabilities.org. The CNA assists in developing and collecting data to support the Council's verification that the price is fair market.

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13-1C-7(A) NMSA 1978 reads, in pertinent part,

“A state agency or local public body intending to procure a service on a list published by the council **shall, in accordance with rules of the council, procure the service** at the price established by the council **if the service is available within the period required** by the state agency or local public body. Procurement pursuant to the State Use Act [13-1C-1 NMSA 1978] is exempt from the provisions of the Procurement Code [13-1-28 NMSA 1978].” (Emphasis added.)

Per law, the CNA has the first right of refusal to provide any service needed by an agency if that service appears on a list of potential services approved by the Council on behalf of the CNA. The list of potential services, that has already been approved by the Council, can be found on the CNA’s web site or by going to <http://www.nmabilities.org/NMAbilities/Services.aspx>. If the CNA, through one or more of its qualified individual service providers, can provide the required service then a contract is entered into between the CNA and the using agency. In such cases, the cost and effort of the normal procurement process is negated.

Subject to using agency concurrence, the CNA will determine that a potential provider(s) is qualified and capable of performing the required service. Note that agencies do not contract directly with the individuals that will be providing the service – they contract with the CNA. For purposes of the State Use Act, the term “services” encompasses both the categories of “services” and “professional services” as defined in the NM Procurement Code, 13-1-28 NMSA 1978.

As noted above, the procurement of services in accordance with the State Use Act is exempt from the NM Procurement Code. And the NM State Use Act makes no distinction as to the dollar value of the services being procured. As such, all potential services needing to be procured, regardless of dollar value and no matter how small that dollar value may be, are subject to acquisition from the CNA. (In other words, the small purchase limits called out in the NM Procurement Code have no bearing on services being procured in accordance with the NM State Use Act.)

Requests for the acquisition of non-professional services shall not be submitted to SPD unless they have been first submitted to the CNA and the CNA has indicated, in writing, that they can not provide the required service. In the case of professional services, that written document must be submitted along with the rest of the contract package to the Department of Finance and Administration/Contracts Review Bureau or DFA/CRB will not process the contract. For procurements of non-professional services, or procurements containing a mixture of non-professional services AND professional services (“hybrid” procurements), the written document must be provided to SPD at the time the procurement is requested by the agency.

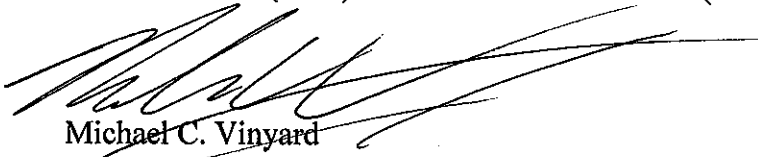
Consistent with 13-1C-7(A) NMSA 1978, the application of the State Use Act only applies to those agencies “...intending to procure a service...” In the case of a contract with multi-year options and the agency wishes to exercise an option to extend the term, the agency will NOT have an intent to procure the services as the services have already been procured. In such cases, the option(s) contained in the EXISTING contract may be exercised and the State Use Act will not apply. If, for any reason (including the agency’s desire not to exercise a contract option), a procurement for the

needed service is to be accomplished, the State Use Act WILL apply and the above process must be followed before a procurement can be initiated.

Agencies desiring to procure a service from an existing Statewide Price Agreement must first contact the CNA to determine if the needed services can be obtained through the CNA. If so, the use of the Statewide Price Agreement is not allowed. If the CNA can not provide the required services, and provides documentation of that fact for the using agency's file, then the agency may proceed to procure the services from the Statewide Price Agreement.

Concerns or disputes should be forwarded to the SPA in writing. The SPA will deal with the matter, or take it to the full Council, as appropriate.

This policy memo reflects a coordinated State Purchasing Division and Department of Finance and Administration (DFA) Contracts Review Bureau (CRB) position.

A handwritten signature in black ink, appearing to read 'Michael C. Vinyard', is written over the printed name and title.

Michael C. Vinyard
State Purchasing Agent