

NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES

Adopted: April 12, 2017 (Revised 1/10/2024, 8/9/2023, 7/12/23, 4/7/21, 4/15/20, 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. That amount was increased further on April 15, 2020. The procedure was amended on April 7, 2021 to allow for the Central Nonprofit Agency to directly distribute certain contracts that have a bid timeline that do not permit the Council to consider the contracts at their next regular meeting. The procedure was further amended on July 12, 2023 to allow for the Central Nonprofit Agency to directly distribute document destruction services, which has a rate schedule approved annually by the Council, for contracts up to \$40,000 and again on August 9, 2023 to make language consistent in sections IV through VIII. This procedure was amended again on January 10, 2024 to provide for the direct distribution of temporary staffing service contracts, as defined below, that do not exceed \$100,000 in amount or 6 months or 1,040 hours in duration.

III. Definitions

1. Service Contract

A contract for defined services provided by persons with disabilities which services are included on a list approved by the Central Nonprofit Agency. A contract may be defined for a period of time or single specified job.

2. Temporary Staffing Service Contract

A contract for a single position, or defined group of positions, to fulfill a temporary personnel gap estimated to last up to 6 months, or 1,040 hours per position. Temporary services are not to be used in lieu of eligible service contracts.

IV. Eligible Temporary Staffing Service Contracts

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

a. For eligible temporary staffing service contracts, the Council will preapprove the types of services suitable for temporary staffing services, as well as rates for those services, subject to the following limitations: (1) the total amount of the temporary staffing service contract to be directly distributed shall not exceed \$100,000; and (2) the contract term shall not exceed the lesser of 6 months or 1,040 hours per position. Temporary staffing service contracts shall not be utilized for services otherwise suitable for standard service contracts discussed in Section IV. Any temporary staffing service contract expected to

extend beyond the dollar or time limits set forth in this paragraph shall be submitted to the Council for approval at its next regular meeting.

b. The state agency or local public body shall not have divided the contract or contracts for other services into amounts less than the limits defined in Section IV(1)(a) 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 staffing 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 staffing 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 staffing 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 staffing 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. Eligible Service Contracts

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

a. For service contracts, the total amount of the contract to be directly distributed shall not exceed \$40,000 for document destruction services, or shall not exceed \$5,000 for other services, unless there has been a determination that the contract includes a bid timeline that will not permit the New Mexico Council for Purchasing from Persons with Disabilities to consider the contract at its next regular meeting as set forth in Section V, or a determination of immediate and urgent need as set forth in Section VI, or a determination of a state or national emergency as set forth in Section VII.

- b. The state agency or local public body shall not have divided the contract or contracts for other services into amounts less than the limits defined in Sections V(1)(a) 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.

VI. Direct Distributions in Cases of Expedited Bid Timelines

There may be instances in which an agency or local public body may have contracts for other services which require bids be submitted and work begin prior to the New Mexico Council for Purchasing from Persons with Disabilities next regular meeting and have a value greater than \$5,000. In such instances, the Central Nonprofit Agency may directly distribute a contract up to \$25,000. While contracts may be granted tentative Chair approval under Section G of 2.40.5.10 NMAC, the timelines of these contracts may be such that the contract will be substantially or wholly performed by the next regular meeting of the Council. For a contract to be eligible for direct distribution by the Central Nonprofit Agency in cases of expedited bid timelines, 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 \$25,000.

- b. The state agency or local public body shall indicate in the request for services that contract must be substantially or wholly performed before the Council's next regular meeting.
- 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 not 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.

VII. 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 other services that is greater than \$5,000. 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 have not 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.

VIII. 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 other services that is greater than \$7,500. In such instances, the Central Nonprofit Agency may directly distribute a contract up to \$40,000. 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 \$40,000.
- 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 have not 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.

IX. Multiple Small Contracts

It is possible that the state agency or local public body procuring the other services may have multiple small contracts directly distributed by the Central Nonprofit Agency, and that the sum of those multiple contracts may exceed \$5,000. It is also possible that the state agency or local public body procuring other 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 other 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 \$40,000. 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.

X. 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.
- d. In the case of temporary staffing services, the position(s) contracted, time period of contract and inception to date fulfilled.

APPROVED BY THE NEW MEXICO COUNCIL FOR PURCHASING FROM
PERSONS WITH DISABILITIES THIS 10th DAY OF January 2024.

Kathleen Pinyan

Kathleen Pinyan, Chair

New Mexico Council for Purchasing from Persons with Disabilities