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November 15, 2017

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 2017 Annual Report

Enclosed is the Fiscal Year 2017 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.



2017 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 Services

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.

2017 Annual Report

2017 Council Members

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>Lisa Dignan, Vice-Chair 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</p>	<p>9/19/2014 - 9/19/2017 <i>Continues to serve until reappointed or replaced</i></p>	<p>Appointed by Council</p>
<p>Secretary Duffy Rodriguez NM Department of Finance & Administration 407 Galisteo, Suite #180 Santa Fe, NM 87501 <i>Duffy.Rodriguez@state.nm.us</i> 505.827.4985</p>	<p>No Term Limit</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 Limit</p>	<p>Governor Appointed</p>
<p>Vacant*</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 <i>Continues to serve until reappointed or replaced</i></p>	<p>Appointed by Council Required by State Use Act</p>

* Position vacated 6/22/15

COUNCIL MEMBERS	TERM	APPOINTED BY
<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</p> <p>3/1/2009 - 3/1/2012 <i>Continues to serve until reappointed or replaced</i></p>	<p>Appointed by Council</p> <p>Required by State Use Act</p>
<p>Roger Newall Veteran's Affairs Liaison, Mayor's Office - City of Albuquerque PO Box 1293 Albuquerque, NM 87103 <i>rnewall@cabq.gov</i> 505.768.3034</p>	<p>9/19/2014 - 9/19/2017 <i>Continues to serve until reappointed or replaced</i></p>	<p>Appointed by Council</p>
<p>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</p>	<p>9/19/2014 - 9/19/2017 <i>Continues to serve until reappointed or replaced</i></p>	<p>Appointed by Council</p>

Scheduled FY 2017 Meetings

- July 13, 2016 - *Quorum*
- August 10, 2016 - *Quorum*
- September 14, 2016 - *Quorum*
- October 12, 2016 - *Quorum*
- November 9, 2016 - *Quorum*
- January 11, 2017 - *Quorum*
- February 8, 2017 - *Quorum*
- March 8, 2017 - *Quorum*
- April 12, 2017 - *Quorum*
- May 10, 2017 - *Quorum*
- June 14, 2017 - *Quorum*



New Mexico Council Activity

- During its July 13, 2016 meeting the Council reviewed and ratified its procedure for Determining and Responding to Significant Adverse Impact and Verification of Fair Market Price. (*attached*)
- During its September 14, 2016 meeting the Council reviewed and ratified its Open Meeting Act Annual Resolution. (*attached*)
- The Council solicited a Request for Proposal for Central Non-profit Agency services on October 14, 2016 with a closing date of October 31, 2016.
- During its April 12, 2017 meeting the Council approved a process for the authorization of small contracts by the Central Nonprofit Agency. (*attached*)
- The Council periodically reviews services suitable for the Program and has approved 47 service categories, excluded 28 service categories, and approved 3 services categories as permissive for sale (*listed below*)

APPROVED SERVICES

- ADA Accessibility Consulting
- Bulk Mailing and Sorting
- Botanical Services
- Call Center Services
- Car Washing
- Clerical Data Entry
- Computer Refurbishing
- Corporate & Personal Background Checks
- Courier Services
- Debris Removal
- Dishwashing Services
- Document Imaging
- Document Imaging Services
- Document Shredding
- Door Greeting
- Employment Support Services
- Envelope Stuffing
- Event Planning
- General Labor
- Geo-Coding
- Hard Drive Destruction
- Independent Living Skills Training
- Irrigation
- IT – Web Training
- IT – Web Training Development
- Janitorial and Housekeeping Services
- Kit Assembling

- Landscaping
- Lobby Attendant
- Mailing Services
- Management of an Assistive Technology Reuse and Recycling Program
- Meeting Minute Preparation Services
- Pecan Processing
- Pest Control and Extermination Services
- Plan Production and Growing
- Plant Rental Services
- Printing Services
- Private Investigation Services
- Radon Testing Services
- Receptionist, Filing and Clerical Services
- Recycling Services
- Rest Area Maintenance
- Shelf Stocking and Restocking
- Snow Removal
- Transcription Services
- Transportation
- Wildlife Services Management
- Yard, Grounds, and Lawn Maintenance

EXCLUDED SERVICES

- Administrative Reports
- Architects

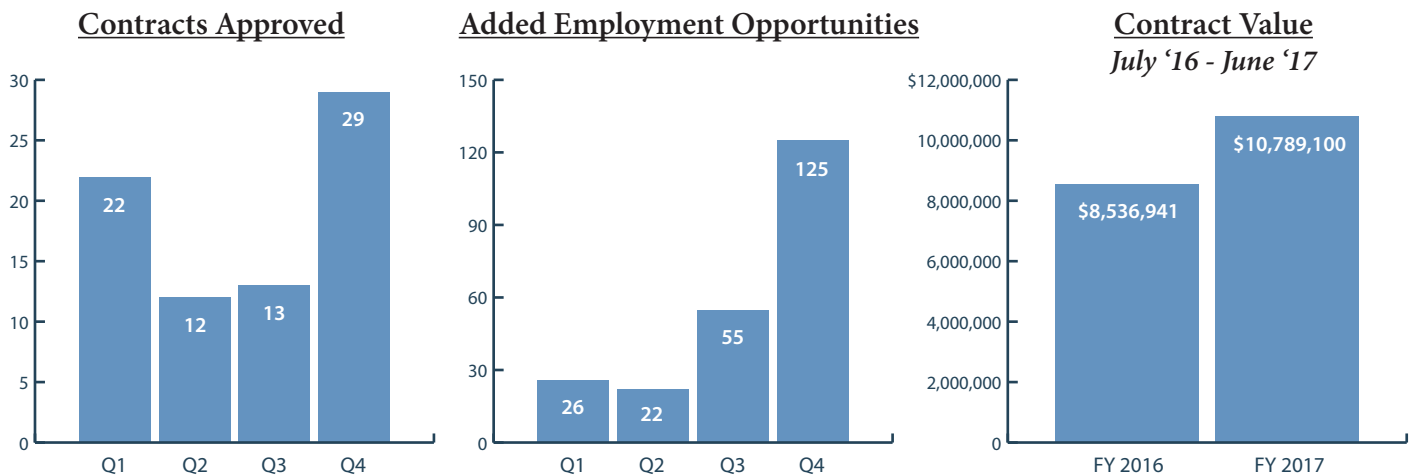
- Archeologists
- Certified Public Accountants
- Construction Managers
- Construction Services
- Demolition
- Engineers
- IT – Enterprise Application
- IT – IV & V
- IT – Project Management
- IT – Web Design
- IT – Web Programmer
- Landscape Architects
- Lawyers
- Management & Systems Analysts
- Medical Arts Practitioners
- Planners
- Psychologists
- Registered Public Accountants
- Remediation – Wall Repair
- Researchers
- Roof Repair and Maintenance
- Public Relations PR & Marketing
- Scientists
- Stair Replacement
- Survey Services
- Surveyors

PERMISSIVE SERVICES

- Graphic Design - Logo Design
- IT Support
- Training Services

State Use Program Success

During the 2017 fiscal year, the New Mexico Council for Purchasing from Persons with Disabilities approved 76 contracts creating employment opportunities for 228 New Mexicans with disabilities working at 17 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.



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 2018 fiscal year.

Top Ten Customers

July 2016 - June 2017

1. New Mexico Department of Transportation
2. New Mexico Human Services Department
3. City of Albuquerque
4. New Mexico Department of Health
5. New Mexico Game and Fish Department
6. New Mexico Department of Military Affairs
7. New Mexico Department of Workforce Solutions
8. Albuquerque Bernalillo County Water Utility Authority
9. New Mexico Children, Youth and Families Department
10. New Mexico Workers' Compensation Administration

New Mexico Council for Purchasing from Persons with Disabilities

Adopted: July 13, 2016

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 to contract 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 to contract 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 to contract 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 to contract 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 to contract 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 to contract 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, as defined and established pursuant to the New Mexico Procurement Code, 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 to contract 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. The statement must include language that it is made under penalty of perjury pursuant to 28 U.S.C. Section 1746. The statement shall also be covered by NMSA 1978, Section 30-25-1, which makes such perjury a 4th degree felony.

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 of adverse impact and the CNA's scope of work and quote, 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 procurement 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 13TH DAY OF July, 2016.



Larry Maxwell
Chair

NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES

OPEN MEETINGS RESOLUTION

September 14, 2016

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 New Mexico Council for Purchasing from Persons with Disabilities gathered in regular meeting this 14th day of September, 2016, 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 72 hours 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, 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 at least 10 days prior to the meeting. 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 also be made available and placed on the web page of the New Mexico State Purchasing Division or the web page of the designated central nonprofit agency at least 72 hours prior to the meeting.

7. For purposes of special meetings described in paragraph 3, notice shall be placed on the web page of the designated central nonprofit agency or of the New Mexico 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 designated central nonprofit agency or the New Mexico State Purchasing Division at least seventy-two (72) hours prior to the meeting.

8. For purposes of emergency meetings described in paragraph 4, 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 designated central nonprofit agency or the New Mexico State Purchasing Division, placement on the web page of the designated central nonprofit agency or the New Mexico 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 designated central nonprofit agency and the New Mexico State Purchasing Division, posted on the web page of the designated central nonprofit agency or the web page of the New Mexico 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. The New Mexico Council for Purchasing from Persons with Disabilities may also place notice on the web page of the designated central nonprofit agency or on the web page of the New Mexico State Purchasing Division.

11. 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.

12. A member of the New Mexico Council for Purchasing from Persons with Disabilities 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 in person. Such attendance is allowed at the discretion of

the Chair, or of the Vice-Chair in the absence of the Chair. 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.

13. 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.

Passed by the New Mexico Council for Purchasing from Persons with Disabilities this 14th day of September, 2016.



Larry Maxwell
Chairman

NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES

Adopted: April 12, 2017

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. This procedure facilitates the equitable distribution of contracts by providing a method for the Central Nonprofit Agency to directly distribute 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 resources approving very small contracts. By authorizing the Central Nonprofit Agency to directly distribute small contracts, the overall process is made more efficient and productive.

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 \$1,500.
 - b. The services to be provided under the contract must have been determined suitable by the New Mexico Council for Purchasing from Persons with Disabilities.
 - c. The state agency or local public body and the Central Nonprofit Agency must agree that the services to be provided under the contract are suitable.

d. 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.

e. 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.”

f. 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.

g. 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. Transparency and Accountability

So as to provide for maximum transparency and accountability, all small 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 following agenda. 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 12TH DAY OF April, 2017.



Larry Maxwell
Chair