



# ANNUAL REPORT

NEW MEXICO COUNCIL FOR  
PURCHASING FROM PERSONS  
WITH DISABILITIES

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# 2024

COMPILED BY:  
HORIZONS OF NEW MEXICO



January 1, 2025

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: Kathleen Pinyan, Chair, New Mexico Council for Purchasing from Persons  
with Disabilities

SUBJECT: FY 2024 Annual Report

Enclosed is the Fiscal Year 2024 Annual Report for the State Use Act. The Purpose of the State Use Act [13-1C-1 NMSA 1978] is to increase opportunities for persons with disabilities to achieve maximum personal independence through useful and productive employment. This is achieved by creating an expanded and reliable market for services delivered by persons with disabilities, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on state and federal public assistance programs.

# ABOUT THE COUNCIL

The New Mexico State Use Act, 13-1C-1 NMSA 1978, is an outgrowth of the state's continuing efforts to expand opportunities for its residents with disabilities. The Act opens state and local government service contracts to businesses owned by persons with disabilities and Community Rehabilitation Programs (CRPs) employing persons with disabilities, so long as the services are provided at fair market pricing.

In addition to offering fair pricing, a convenient and efficient procurement method, and outstanding customer service, every transaction made helps support employment opportunities for New Mexicans with disabilities. The Council contracts with a Central Non-Profit Agency (CNA), currently Horizons of New Mexico, to administer the day-to-day operations of the Program.

## 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.







## EMPOWERING SUCCESS

Yadira Hurst Builds a Thriving, Inclusive Business with State Use

**Y**adira “Yadi” Hurst is the owner of AJ’s Cleaning Service, a Santa Fe-based commercial janitorial firm. Yadi started the business in 2020 after having spent 15 years in the cleaning industry, including working for Crystal Clear Maintenance, another State Use provider.

As an individual with a disability, Yadi has found the advantages to self-employment to improve her financial well-being. As she put it, “being a business owner has allowed me to create a flexible work environment that accommodates my disability. Traditional jobs often lacked the necessary flexibility, and I found it difficult to balance my health needs with rigid workplace expectations. Owning AJ’s Cleaning Service, LLC gives me the ability to structure my day in a way that works for me while still ensuring the success of my business. The ability to set my schedule, prioritize my health, and manage the business in a way that suits my needs has made me more productive and financially successful. It’s also been an opportunity to give back to the community by creating job opportunities for others, especially those who face similar challenges.”

Yadi said that she, “decided to start AJ’s Cleaning Service, LLC because I wanted to offer exceptional, reliable cleaning services while reflecting my values as a minority, woman-owned business. The cleaning industry is essential, and I recognized that I could

provide better, more personalized services that meet the specific needs of businesses, including offices, medical facilities, and other commercial spaces. I also saw an opportunity to create a workplace that embraced diversity and inclusion, where employees are valued and respected. As a bilingual business owner, I’m proud to serve a broader clientele and help bridge communication gaps for our clients.”

Currently, AJ’s Cleaning Service consists of five employees, and Yadi places a strong emphasis on training her staff to maintain the “highest standards of cleanliness and professionalism.” Their customers include a wide range of government and private commercial clients, including office buildings, medical facilities, retail stores, and real estate companies requiring post-construction or move-in/move-out cleaning, maintenance, and cleaning services for government buildings, corporate offices, and industrial properties.

As she moves forward with her business, Yadi said that “becoming a State Use provider has been a game-changer for AJ’s Cleaning Service, LLC. This designation has allowed additional access for state and government contract availability, providing the company with consistent, long-term opportunities that help ensure the stability and growth of the business.”

# COUNCIL MEMBERSHIP

COUNCIL MEMBERS	TERM	APPOINTED BY
<b>Secretary Wayne Propst</b> - Kathleen Pinyan, Designee/Chair NM Department of Finance & Administration Kathleen.Pinyan@dfa.nm.gov	1/1/2023 - 12/31/2026	Governor Appointed
<b>Pam Lillibridge</b> , Vice-Chair CRP Representative Pam3717@comcast.net	10/1/2021 - 10/1/2024	Appointed by Council Required by State Use Act
<b>Greg Trapp</b> , Secretary NM Commission for the Blind Greg.Trapp@cfb.nm.gov	10/1/2021 - 10/1/2024	Appointed by Council
<b>Antoinette Holmes</b> NM Division of Vocational Rehabilitation Antoinette.Holmes@dvr.nm.gov	No Term Limits, Membership includes Vocational Rehabilitation Representative	Governor Appointed Required by State Use Act
<b>Dorothy Mendonca</b> State Purchasing Agent, State Purchasing Division Dorothy.Mendonca@gsd.nm.gov	No Term Limits, Membership includes State Purchasing Agent or designee	Required by State Use Act
<b>Secretary Teresa Casados</b> - Amanda Romero, Designee NM Children, Youth, and Families Department Amanda.Romero@cyfd.nm.gov	4/8/2024 - 4/7/2028	Governor Appointed
<b>Lisa Dignan</b> NM Commission for Deaf and Hard of Hearing Lisa.Dignan@cdhh.nm.gov	10/1/2021 - 10/1/2024	Appointed by Council
<b>Roger Newall</b> Disabled Veteran nmrefsch@msn.com	10/1/2021 - 10/1/2024	Appointed by Council
<b>Mike Kivitz</b> CRP Representative MiKivitz@gmail.com	10/1/2021 - 10/1/2024	Appointed by Council Required by State Use Act

## LEGISLATIVE RECOMMENDATIONS

The Council would like to extend its thanks for the New Mexico Legislature’s continued support of the State Use Program and the meaningful employment opportunities the Program provides for individuals with disabilities. This Program, created by the legislature, plays a pivotal role in empowering individuals with disabilities by providing a pathway to the workforce, which promotes increased independence and self-sufficiency. Through the continued support of the legislature and state agencies, the Program empowers New Mexicans of all abilities, enabling them to contribute meaningfully to their communities while strengthening their sense of dignity and self-worth. The Council has no legislative recommendations at this time and looks forward to the ongoing support of the legislature as the Program continues to build a more inclusive and prosperous New Mexico.

# APPROVED, EXCLUDED, & PERMISSIVE SERVICES

As part of its statutory responsibility, the Council continued to review and define all approved, excluded, and permissible services under the State Use Act in FY24. *(Services listed below, definitions attached)*

## APPROVED SERVICES

- ADA Accessibility Consulting
- Auctioneering Services
- Bulk Mailing and Sorting
- Botanical Services
- Call Center Services
- Car Washing
- Clerical Data Entry
- Computer Refurbishing
- Courier Services
- Debris Removal
- Decontamination, Sanitation & Sterilization Services
- Dishwashing Services
- Document Imaging
- Document Destruction
- Envelope Stuffing
- Event Planning
- General Labor
- Greeting Services
- Hard Drive Destruction
- Janitorial and Housekeeping Services - Including COVID-19 and other Disinfecting Services
- Kit Assembling
- Landscape Irrigation
- Landscaping
- Mailing Services
- Management of an Assistive

- Technology Reuse and Recycling Program
- Medical Waste Disposal
- Meeting Minute Preparation Services
- Moving Services
- Outdoor Accessibility Consulting
- Pest Control and Extermination
- Plant Rental Services
- Printing Services
- Receptionist, Filing and Clerical Services
- Recycling Services
- Rest Area Maintenance
- Screen Printing
- Shelf Stocking and Restocking
- Snow Removal
- Temporary Staffing Services
- Transcription Services
- Transportation
- Wildlife Services Management
- Yard, Grounds, and Lawn Maintenance

## EXCLUDED SERVICES

- Architects
- Employment Support Services
- Engineers
- Landscape Architects

- Lawyer Services
- Remediation – Wall Repair
- Survey Services
- Surveyors

## PERMISSIVE SERVICES

- Administrative Reports
- Archaeologists
- Certified Public Accountants
- Corporate and Personal Background Checks
- General Accounting
- Graphic Design
- Graphic Design - Logo Design
- IT – Enterprise Application
- IT – IV & V
- IT Network and Database Management
- IT – Project Management
- IT Security Services
- IT Support
- IT – Web Design
- IT – Web Programmer
- Marketing
- Private Investigation Services
- Public Relations
- Social Media Marketing
- Training Services

## COUNCIL ACTIVITY

- During its July 12, 2023 and August 9, 2023 meetings the Council revised its Direct Distribution Procedure to include document destruction contracts \$40,000 or less and increased the direct distribution amount to \$5,000. During its January 10, 2024 meeting the Council revised its Direct Distribution Procedure to allow for temporary staffing services contracts (attached).
- During its November 8, 2023 meeting, the Council reviewed and adopted its Open Meetings Act Annual Resolution (attached).
- At its January 10, 2024 meeting, the Council held its annual election of officers. The 2024 officers are:
  - Kathleen Pinyan, Chair
  - Pam Lillibridge, Vice-Chair
  - Greg Trapp, Secretary
- During its June 26, 2024 meeting, the Council updated its Adverse Impact Procedure (attached).



## REACHING FOR THE STARS



**F**or Donovan Romero, the New Mexico Space History Museum is his “home away from home.” Donovan, an employee of Tresco, is the custodian in charge of keeping the museum clean. He says, “I want to make sure this place is clean and looks good for all who visit just like my home.”

The New Mexico Space History is located in Alamogordo and is under the New Mexico Department of Cultural Affairs. Donovan is an Alamogordo native who took the job with Tresco three years ago during COVID-19 pandemic when job opportunities were particularly hard to find. During that time, he’s become part of both the Tresco family and the Space History Museum family.

Asked what a typical workday is like, Donovan replied, “First thing in the morning when I get to the museum is making sure I have everything I might need on my cleaning cart that I take with me, I will do a full cleaning swipe on all floors before the museum opens for business and try to stay out of the way while customers walk around and explore the building but also making sure everyone that comes by, comes to a nice clean and sanitary place to have fun at.”

As an individual with a disability, certain job tasks can create challenges for Donovan. However, he knows he has support from Tresco and his supervisor if he needs assistance. Donovan said that he “believes the Tresco mission is important as Tresco helps individuals with disabilities gain skills and access to jobs. Tresco gives people a chance to better themselves and grow.”

Billy Jones, Deputy Director of the New Mexico Space History, said, “Donovan does his work unsupervised and does quality work. He is responsive to needs as they arise, a solid performer, and an asset to our staff.”

Horizons of New Mexico, as the Central Nonprofit Agency managing the State Use Act, works with local government agencies to secure contracts like this one that create long-term sources of employment for individuals with disabilities around New Mexico. This contract has been a big success for Tresco, Donovan, and the New Mexico Space History Museum.

# STATE USE SUCCESS



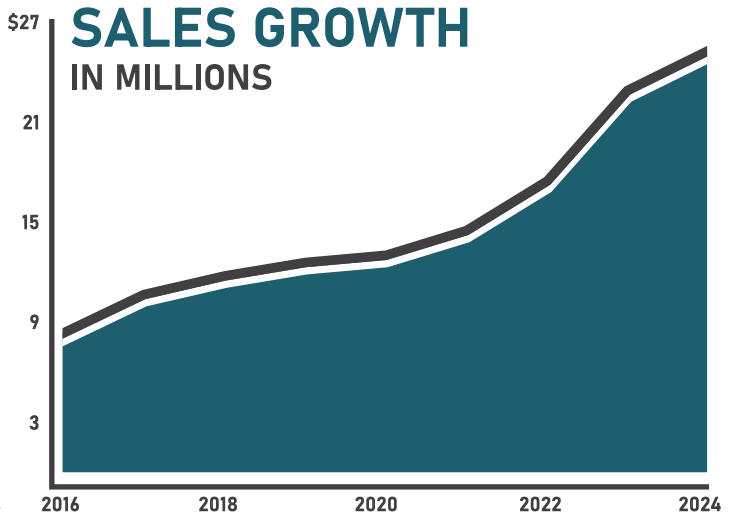
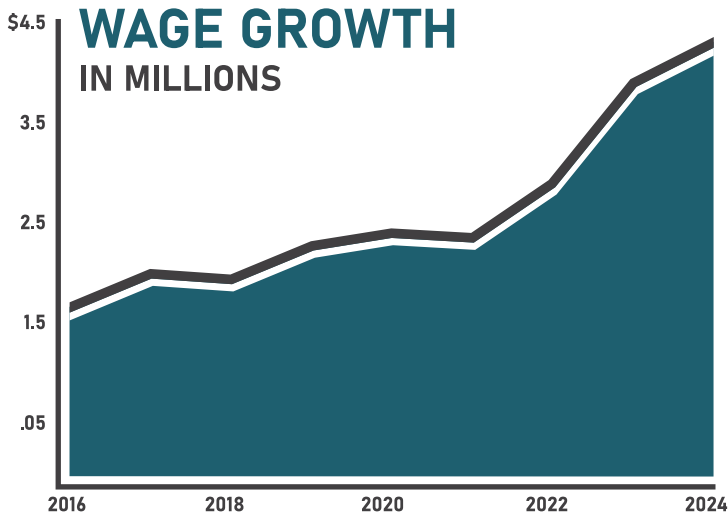
\$5.64 MILLION  
TOTAL PROGRAM WAGES



371,267 TOTAL  
PROGRAM HOURS



448 TOTAL  
PROGRAM EMPLOYEES



## TOP 10 CUSTOMERS

1. NM Health Care Authority
2. NM Department of Transportation
3. City of Albuquerque
4. NM Health Insurance Exchange
5. NM Department of Health
6. Albuquerque Bernalillo County Water Utility Authority
7. NM Department of Game and Fish
8. NM Department of Military Affairs
9. NM Department of Workforce Solutions
10. NM Department of Public Safety



# FY24 COUNCIL MEETING ACTIVITY

**\$28,664,427**

Service Contracts Approved by the New Mexico Council for Purchasing from Persons with Disabilities

*\*\$55,975,112 including multi-year contracts*

**\$196,344**

Contracts Directly Distributed Under CNA Authority

**\$13,385**

Contracts Directly Distributed Under CNA Authority in Cases of Urgent and Immediate Need

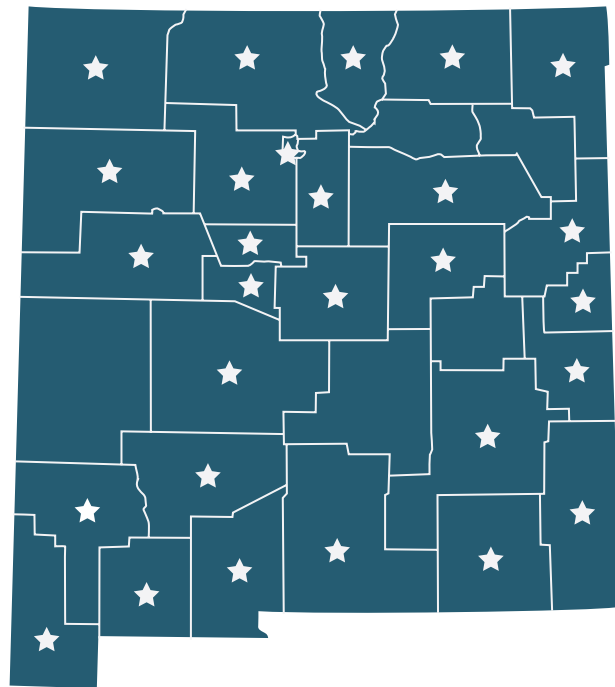
MEETING DATE	CONTRACTS APPROVED	CONTRACTS DIRECTLY DISTRIBUTED
July 12, 2023	14	8
August 9, 2023	8	5
October 11, 2023	9	20
November 8, 2023	3	10
December 13, 2023	2	13
January 10, 2024	1	4
February 7, 2024	4	11
April 3, 2024	4	17
May 8, 2024	5	14
June 12, 2024	14	50
June 26, 2024	74	12

## FY24 BY THE NUMBERS

In fiscal year 2024, the State Use Program successfully advanced independence and self-sufficiency for New Mexicans with disabilities by fostering employment opportunities. The New Mexico Council for Purchasing from Persons with Disabilities approved 138 contracts spanning 28 counties, resulting in jobs for 311 individuals with disabilities at 19 community rehabilitation programs (CRPs) and provider businesses.

These contracts provided meaningful employment, enabling New Mexicans with disabilities to become productive, tax-contributing members of society, which in turn positively impacts the state and its local communities. Through this initiative, employees earned over \$4.34 million in wages.

The State Use Program continues to drive success, with both wages paid to individuals with disabilities and overall program sales increasing year over year. Looking ahead to 2025, program stakeholders are committed to further expanding opportunities and creating additional pathways to meaningful employment.



## State Use Act Approved Services

*The service categories below have been approved by the New Mexico Council for Purchasing from Persons with Disabilities and are available through Horizons of New Mexico.*

1. ADA Accessibility Consulting Services  
*Training on accessibility history, laws, regulations, standards, guidelines and building codes. Includes site inspections, plan reviews, and ADA transition plans.*
2. Auctioneering Services  
*Providing a service in a live indoor/outdoor, or online setting that connects buyers and sellers through a process of bidding to maximize value for seller's assets.*
3. Bulk Printing and Mailing  
*Full service facility that processes, folds, inserts, prints, and mails large quantity mailing jobs. The service can include form design, printing both color and black/white duplex prints, additional inserts or remit envelopes, and mail presort.*
4. Botanical Services  
*Service includes: planning and managing nursery operations; conducting research and development of native tree and shrub species; determining species germination and propagation needs; acquiring necessary seed, soil, and containers to germinate and grow seedlings; seedling distribution. Does not include cannabis or medical marijuana, inclusive of any Department of Health growing program.*
5. Call Center Services  
*Centralized office used for receiving or transmitting a large volume of requests by telephone.*
6. Car Washing  
*Cleaning of exterior and interior of fleet or individual passenger vehicles, excluding airplanes.*
7. Clerical Data Entry  
*Entering or updating data into a computer system. Data is often entered into a computer from paper documents using a keyboard.*
8. Computer Refurbishing  
*Used computer equipment that has been restored to like-new working condition and/or appearance. Typically refers to the hardware components of a computer that have been either replaced with similar components or updated with newer technology than the device originally came with.*
9. Courier Services  
*Fast, door to door pickup and delivery service for high-value goods or urgently required documents.*
10. Debris Removal  
*Removal of various types of debris from a property.*

11. Decontamination, Sanitation, and Sterilization Services  
*The services include the proper containment and decontamination and sanitation services, in performance of the remedial microbial and viral contaminant services and/or incidental hazardous cleaning/disinfectant cleaning services.*
12. Dishwashing Services  
*The process of cleaning cooking utensils, dishes, cutlery.*
13. Document Imaging Services  
*The digital storage, retrieval and management of electronic images of documents. The main methods of capturing images are by scanning paper documents or microfilm/fiche.*
14. Document Destruction  
*On-site or plant-based destruction of private, confidential, or possibly sensitive documents.*
15. Envelope Stuffing  
*Preparing documents and envelopes for mail-out.*
16. Event Planning  
*The process of managing a project such as a meeting, convention, tradeshow, ceremony, team building activity, or party. Services can include budgeting, establishing timelines, selecting and reserving the event sites, acquiring permits, planning food, coordinating transportation, developing a theme, arranging for activities, selecting speakers and keynotes, arranging for equipment and facilities, managing risk, and developing contingency plans.*
17. General Labor  
*Non-specialized physical labor performed in or outside an office setting.*
18. Greeting Services  
*Welcoming visitors and customers as they arrive at a location. Also may provide customers and other visitors with information regarding hours of operation, merchandise locations, nearby businesses or public restroom facilities.*
19. Hard Drive Destruction  
*Destruction of data on electronic media so that it is completely unreadable and cannot be accessed or used for unauthorized purposes.*
20. Janitorial and Housekeeping Services  
*Commercial property cleaning, including professional offices, educational, medical and industrial business cleaning.*
21. Kit Assembling  
*Taking individual parts of a product and putting them together or preparing for sale. Can include consolidated bagging or boxing of individual items.*



22. Landscape Irrigation  
*Services include the installation and/or maintenance of landscaping irrigation/sprinkler and drip systems.*
23. Landscaping  
*Management of property vegetation and grounds, including mowing, edging, planting, fertilizing, weed control, watering, pruning, and trimming.*
24. Mailing Services  
*Third-party coordination and mailing of documents as instructed by customer.*
25. Management of an Assistive Technology Reuse and Recycling Program  
*Program management includes accepting, receiving and documenting donations of computers, durable medical equipment, assistive technology software and/or assistive technology devices that can be cleaned, refurbished, and put back in use for people with disabilities living in the community.*
26. Medical Waste Disposal  
*The removal and subsequent disposal of medical waste generated in healthcare facilities, medical laboratories, and veterinary clinics. Medical waste includes materials such as sharps containers and red bags.*
27. Meeting Minute Preparation Services  
*Preparation of verbatim or non-verbatim meeting minutes, including topics discussed and vote outcome.*
28. Moving Services  
*Inclusive of the transportation of goods from one location to another, moving services may include packing, loading, moving, unloading, unpacking, arranging of items to be shifted.*
29. Outdoor Accessibility Consulting  
*Provide outdoor project consultation for the purpose of creating spaces that are considerate towards disability inclusion, adaptive equipment users, multi-user group engagement, sustainability, growth, and the environment.*
30. Pest Control and Extermination Services  
*The reduction or regulation of the population of noxious, destructive, or dangerous insects or other animals through chemical treatment or other methods.*
31. Plant Rental Services  
*Leasing and maintenance of (typically) indoor vegetation.*
32. Printing Services  
*Preparation and printing of documents or other media. Can include layout, design, color correction, packaging and other related services.*

33. Receptionist, Filing and Clerical Services  
*Performing of day-to-day office tasks, such as answering phones, filing and entering data into spreadsheets.*
34. Recycling Services  
*Collection and separation of materials for recycling.*
35. Rest Area Maintenance  
*Full-service maintenance of roadside rest areas, including janitorial services, landscape maintenance, and repair services.*
36. Screen Printing  
*Creation of custom printed apparel items using a screen-printing press.*
37. Shelf Stocking and Restocking  
*Can include receiving merchandise, unloading or unpacking it, marking it with codes to be identified, stocking shelves.*
38. Snow Removal  
*Removal of existing snow, ice or frost from a roadway or other surface. It includes both mechanical means, such as plowing or scraping, and chemical means, such as application of salt or other ice-melting chemicals.*
39. Temporary Staffing Services  
*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.*
40. Transcription Services  
*Conversion of speech (either live or recorded) into a written or electronic text document.*
41. Transportation  
*Personal transportation services for individuals or groups to appointments, events, or specific locations.*
42. Wildlife Services Management  
*Wildlife control through hunting, trapping, and fishing. Also includes study of wildlife population, location and depredation.*
43. Yard, Grounds, and Lawn Maintenance  
*Management of property vegetation and grounds, including mowing, edging, planting, fertilizing, weed control, watering, pruning, and trimming.*

## State Use Act Excluded Services

*The service categories below have been deemed unsuitable under the State Use Act by the New Mexico Council for Purchasing from Persons with Disabilities.*

1. Architects  
*Individuals who design buildings and, in many cases, also supervise their construction.*
2. Employment Support Services  
*Assisting people with disabilities in obtaining and maintaining employment.*
3. Engineers  
*Individuals who design, build, or maintain engines, machines, or public works.*
4. Landscape Architects  
*Licensed professionals that analyze, plan, design, manage, and nurture the built and natural environments.*
5. Remediation – Wall Repair  
*Construction services involving the repair of a wall or walls by a licensed general contractor.*
6. Lawyer Services  
*Licensed professionals who are qualified to offer advice about the law or represent others in legal matters.*
7. Survey Services  
*Conducting surveys via focus groups, sample grouping, or other methods.*
8. Surveyors  
*Individual who makes exact measurements and determine property boundaries. Provides data relevant to the shape, contour, gravitation, location, elevation, or dimension of land or land features on or near the earth's surface for engineering, mapmaking, mining, land evaluation, construction, and other purposes.*

## State Use Act Permissive Services

*The service categories below have been approved by the New Mexico Council for Purchasing from Persons with Disabilities as permissible for sale under the State Use Act through Horizons of New Mexico. While the Council recognizes that certain Horizons of New Mexico members are capable of performing the services listed below, said services are considered permissive and excluded from the mandatory aspect of the State Use Program. Any procurement of the below services through Horizons of New Mexico is at the discretion of the purchasing agent and will be considered by the Council on a case-by-case basis.*



1. Administrative Reports  
*Developing reports on state, plans, or other topics using and compiling demographic data, focus groups, stakeholder responses and other sources.*
2. Archeologists  
*A person who studies human history and prehistory through the excavation of sites and the analysis of artifacts and other physical remains.*
3. Certified Public Accountants  
*Licensed individual who provides accounting services including preparation, review, and auditing of the clients' financial statements. tax work including the preparation of income tax returns, and estate and tax planning.*
4. Corporate and Personal Background Checks  
*The process of looking up and compiling criminal records, commercial records, and financial records of an individual or an organization.*
5. General Accounting  
*Individual who provides public accountancy services such as audit and reporting on financial statements, and such other activities (e.g. judicial management) as required by law.*
6. Graphic Design  
*The utilization of typography, photography, and illustration to layout and create advertisements, magazines, books, or other print or electronic materials.*
7. Graphic Design - Logo Design  
*Providers either create a unique logo or edit an existing logo for use in both print and web materials.*
8. IT – Enterprise Application  
*Developing and/or instituting enterprise application plans relating to the display, manipulation, and storage of large amounts of often complex data and the support or automation of business processes with that data.*
9. IT – IV & V  
*Independent verification and validation (IV&V) involves verification and validation done by a third party organization not involved in the development of the product. Thus, the product, such as software, gets examined by third party. The main check performed is whether user requirements are met alongside ensuring that the product is structurally sound and built to the required specifications.*
10. IT Network and Database Management  
*Network management refers to the broad subject of managing computer networks. There exists a wide variety of software and hardware products that help network system administrators manage a network. Network management covers a wide area, including:*
  - *Security: Ensuring that the network is protected from unauthorized users.*
  - *Performance: Eliminating bottlenecks in the network.*
  - *Reliability: Making sure the network is available to users and responding to hardware and software malfunctions.*

*Database services include the creation and maintenance of data systems to organize and process information.*

11. IT – Project Management

*Services include planning, organizing and delineating responsibility for the completion of specific IT goals.*

12. IT Security Services

*Comprehensive analysis of network risks and determining the best method to manage and mitigate them; either by patching the vulnerabilities or adding countermeasures, such as access control lists to block access to the vulnerability.*

13. IT Support

*In-person, phone, or web-based assistance by experts on computer software, hardware, internet, applications, and other IT-related topics.*

14. IT – Web Design

*Services involving the production and maintenance of websites, including: web graphic design; interface design; authoring, including standardized code and proprietary software; user experience design; and search engine optimization.*

15. IT – Web Programmer

*The writing, markup and coding involved in web development, which includes web content, web client and server scripting and network security.*

16. Marketing

*The activity, set of institutions, and processes for creating, communicating, delivering, and exchanging offerings that have value for customers, clients, partners, and society at large.*

17. Private Investigation Services

*Gathering of information on a subject or situation by licensed professionals using a number of surveillance and investigative techniques.*

18. Public Relations

*Utilization of a wide range of media to build and sustain a good image for a company, organization or brand through planned publicity campaigns and PR activity.*

9. Social Media Marketing

*The use of social media platforms and websites to promote products, services, or other customer initiatives and agendas.*

19. Training Services

*Personnel training in a variety of disciplines by consultants, trainers, or content experts.*

## 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. 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

NEW MEXICO COUNCIL FOR  
PURCHASING FROM PERSONS WITH DISABILITIES

OPEN MEETINGS RESOLUTION

November 8, 2023

WHEREAS, Section 10-15-1(B) of the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013), 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, a public body subject to the Open Meetings Act may hold a meeting to discuss, formulate, or act on public business only after providing reasonable notice to the public; and

WHEREAS, Section 10-15-1(D) of the Open Meetings Act requires all public bodies, including the New Mexico Council for Purchasing from Persons with Disabilities, to determine annually what constitutes reasonable notice for their public meetings;

NOW, THEREFORE, be it resolved by the New Mexico Council for Purchasing from Persons with Disabilities, gathered in regular meeting this 8th day of November, 2023 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 10 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 24 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 30 days prior to the hearing date.
6. For purposes of regular meetings, 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 placed on the web page of the designated central nonprofit agency, Horizons of New Mexico, 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.

7. For purposes of special meetings, notice shall be placed on the web page of the designated central nonprofit agency, Horizons of New Mexico, at least 72 hours before 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.

8. For purposes of regular and special meetings, meeting agendas shall be placed on the web page of the designated central nonprofit agency at least 72 hours prior to the meeting.

9. For purposes of emergency meetings, 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, placement on the web page of the designated central nonprofit agency, 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.

10. For the purpose of rule hearings, 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, posted on the web page of the designated central nonprofit agency, 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.

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. 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.

14. Meetings Held During States of Emergencies: In the event declared states of emergency due to the spread of an infectious disease, due to the spread of chemical, biological, or radiological hazards, or due to some other comparable disaster or emergency, and if postponing one or more items of business until the conclusion of the state of emergency would be inconsistent with the proper and efficient operation of the Council, the New Mexico Council for Purchasing from Persons with Disabilities may hold a meeting designed to preserve the health and safety of the public while also adhering to the purposes of the Open Meetings Act. This shall consist, where possible, of the members of the Council appearing telephonically or by video webcast, with the public able to observe the proceedings at both a physical location and a video webcast or telephonic location. However, where such arrangements are not possible due to public health or safety concerns, and at the election of the Chair, or of the Vice Chair should the Chair be unavailable, the Council may hold a video and/or telephonic meeting, subject to all of the following conditions and limitations:

(a) Each member 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.

(b) A video webcast or telephonic meeting may only be held if the members of the Council are unable to meet in a physical location due to the state of emergency, including when an order is in place limiting or prohibiting public gatherings.

(c) Both the notice and the agenda of any video webcast or telephonic meeting shall provide information to the public on how the meeting may be accessed remotely, either through the video webcast, telephone, or similar technology. All meeting documents, except those which are exempt from disclosure as a public record, shall be available on the website of the Central Nonprofit Agency before and during the meeting for public access and review, or shall be made available during the meeting for downloading.

(d) At any video webcast or telephonic meeting, all votes shall be cast through a roll-call vote. The Chair shall suspend all discussion in the event that the audio is interrupted or becomes unintelligible.

(e) The Council shall make an audio recording of any video or telephonic meeting and, within five business days of the meeting, post the recording on the website of the Central Nonprofit Agency for a period of not less than thirty days. The Council shall maintain a copy of the recording for a period of at least three years, or as may otherwise be required by state or federal records retention laws, and make the recording available

as may be required by the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019).

Passed by the New Mexico Council for Purchasing from Persons with Disabilities this 8th day of November, 2023.

*Kathleen Pinyan*  
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Kathleen Pinyan, Chair  
New Mexico Council for Purchasing from Persons with Disabilities

## New Mexico Council for Purchasing from Persons with Disabilities

Adopted: June 8, 2016, Revised June 26, 2024

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

The following procedure modifies and amends all prior adverse impact 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.” NMSA 1978, § 13-1C-2. This procedure is established pursuant to NMAC 2.40.5.10 F (2).

#### II. ADVERSE IMPACT COMMITTEE OF THE COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES

The Adverse Impact Committee of the Council for Purchasing from Persons with Disabilities is established and shall be appointed by the Council Chairperson, which will be comprised of three (3) members, with at least one member being a member of the Executive Committee. Committee members are not required to be members of the Council for Purchasing from People with Disabilities pursuant to Council Bylaws Article IV

#### III. SUITABILITY

The state agency or local 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 pursuant to NMAC 2.40.5.8.

Pursuant to NMAC 2.40.5.10(F) NMAC, an individual contract may be considered to be non-State use eligible when:

1. There are external requirements that proscribe the use of a specific provider;
2. It is unsuitable for some other reason, or;
3. 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 local public body that a particular contract 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.

#### IV. 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 local public body. In the event a state agency or local public body believes an adverse impact situation may exist, discussions between the state agency or local 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 local 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 Council for Purchasing from Persons with Disabilities. 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 local 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 local public body may submit documentation of discussions or meetings with State Use Act members to the Adverse Impact Committee of the Council for Purchasing from Persons with Disabilities 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 local 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 local public body may submit documentation of discussions or meetings with State Use Act members or the Central Nonprofit Agency to the Adverse Impact Committee of the Council for Purchasing from Persons with Disabilities 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 local 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 local 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 providers to the Adverse Impact Committee of the Council for Purchasing from Persons with Disabilities as a part of the written statement of the significant adverse impact.

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 local 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 Adverse Impact Committee of the Council for Purchasing from Persons with Disabilities 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 local public body that seeks to assert significant adverse impact may do so by submitting a written statement of the significant adverse impact to the Adverse Impact Committee of the Council for Purchasing from Persons with Disabilities 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 is made under penalty of perjury pursuant to NMSA 1978, Section 30-25-1, which makes such perjury a 4<sup>th</sup> degree felony.

3. The Adverse Impact Committee will acknowledge to the agency or public body receipt of the assertion within seven (7) days. The Adverse Impact Committee will commence review of the statement(s) and other documentation from either the agency or local public body, or Central Nonprofit Agency to clarify the concerns presented. The Adverse Impact Committee will consider and review the assertion with due haste within the requirements of the review. The Adverse Impact Committee may request additional information for review at their discretion. In the case of asserted adverse impact due to excessive cost, the Adverse Impact Committee will accept documentation of such assertion for analysis in a format of their choice as further detailed below.



The agency or local public body may submit quotes for identical services obtained from businesses that are not State Use Act providers in the following manner:

- A. The assertion will be accompanied by the service provider's documentation of their qualifications and capacity to successfully complete the contract.
  - B. The scope of work must be identical.
  - C. The contract term of the work must be identical.
  - D. The agency or local public body is prohibited from engaging in a Request for Proposals before the resolution of the matter is fully resolved by the Council in its favor and notice has been given.
  - E. The agency or local public body may be allowed to present a non-binding quote from an alternative provider for comparative purposes in their assertion.
  - F. The alternative provider is prohibited from subcontracting a significant portion of the work to another provider.
  - G. The cost breakdown must include separately disclosed amounts in these categories:
    - a. Direct and Indirect labor detailed by hours, hourly wage;
    - b. Mandatory and non-mandatory employee benefits;
    - c. Travel costs including mileage costs detailed by mileage rate and miles;
    - d. Insurance;
    - e. Administration/overhead costs;
    - f. Detail for supplies and materials cost components;
    - g. If an insignificant subcontract is quoted, it must be accompanied by work description, the hours and rate to arrive at the subcontract cost.
  - H. Should the submitted quote not be in conformance with the Committee requirements, the submittal will be returned by the Committee to the agency or public body for corrections.
4. 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.
5. The Adverse Impact Committee shall review the statement of adverse impact and the CNA's scope of work and quote, and prepare a recommendation to the Council as to whether there is a significant adverse impact. Should the Adverse Impact Committee conclude that there is substantial evidence of such a significant adverse impact, it shall issue a written recommendation of the adverse impact with a proposed action to the Council for a vote at the next scheduled Council meeting. The Council shall consider the recommendation of the Adverse Impact Committee and proposed course of action and shall vote to accept or deny the recommendation of the Adverse Impact Committee. The Council may also select an alternative course of action or return the recommendation to the Adverse Impact Committee for further review. Subsequent to the Council acceptance, the Council shall notify the agency or local public body..
6. In the case of a determination of significant adverse impact, the procurement shall proceed pursuant to the procurement code.

7 The Council shall periodically review all determinations of significant adverse impact to ensure compliance with the State Use Act.

APPROVED BY THE NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES THIS 26TH DAY OF June, 2024.

*Kathleen Pinyan*

Kathleen Pinyan

Chair