COMMENTARY ON SUBMITTED COMMENTS IN REGARD TO STATE PROCUREMENT CODE REGULATIONS (Section 1.4.1 NMAC).

COMMENT: one comment asked for the inclusion of definitions for “State Purchasing Agent” and “Small Purchase Agent” while two comments asked for the inclusion of definitions for “Procurement Officer,” and “Procurement Manager.”

REPLY: “State Purchasing Agent” and “Procurement Officer” are defined in Statute. The Rule intentionally did not use space to repeat definitions already set forth in Statute. “Procurement Manager” is defined in Requests for Proposals where it is used. “Small Purchase Agent” is not a known term.

COMMENT: regarding section 1.4.1.7, definition of “Anti-poverty program businesses” suggested changing “through private philanthropy” to “through private donation.”

REPLY: The phrase used was taken from NMSA 1978, Section 13-1-130.

COMMENT: regarding section 1.4.1.7, definition of “Contract”: suggested a change to, “a purchase order alone containing terms and conditions can be a binding contract.”

REPLY: The addition of the phrase “terms and conditions” was deemed unnecessary as a purchase order always contains such terms and conditions.

COMMENT: regarding Section 1.4.1.7, definitions: asked for a definition of “Best Obtainable Price” which is not defined in statute.

REPLY: Added a definition for “Best Obtainable Price” to the Rule.

COMMENT: regarding Section 1.4.1.8: “… should this be ‘small purchases having a value not exceeding twenty thousand dollars ($20,000).’”

REPLY: Formerly, the Rule misstated the amount of small purchases exempt from the review of the State Purchasing Agent at $20,000; in fact, that amount is $1,500 (see NMSA 1978, Section 13-1-99.B). This has been corrected in the updated Rule.

COMMENT: regarding 1.4.1.19: suggesting removing “by telegram” and replacing with “by e-mail[.]”

REPLY: E-mail is already included by “other electronic means.”

COMMENT: regarding Section 1.4.1.41: specifically addressed questions and clarifications regarding the language dealing with “Best and Final Offers.”

REPLY: Although the phrase “strongly discouraged” was not removed, language surrounding this section and other relating sections was changed to add clarification to the situation when Best and Final Offers are used or are not used.

COMMENT: regarding Section 1.4.1.41: “I am confused by the proposed language as it purports to allow additional negotiations after an award, when it appears that the definition of award stated in other provisions throughout the rules would and should prohibit this for fundamental fairness, if for no other reason.”
REPLY: The language was changed and clarified in an attempt to eliminate this concern.

COMMENT: regarding Section 1.4.1.47: “DFA CONTRACT REVIEW: All contracts for professional services with state agencies shall be reviewed as to budget requirements by the department of finance and administration, if such review is required by DFA or subsequent DFA rules.”

REPLY: The language was accepted.

COMMENT: regarding Section 1.4.1.54: asks for clarification with regard to the phrase, “[W]hen the state purchasing agent or a central purchasing office[.]”

REPLY: The wording is taken directly from statute and appears self-evident.

COMMENT: regarding Section 1.4.1.65: specifically, how this section applies to the Procurement Card Program.

REPLY: Added language to the Rule to clarify that the Procurement Card Program use did not constitute “piggybacking.”

COMMENT: regarding section 1.4.1.65: requested adding clarifying language to the effect, “Procurement under existing contracts developed through cooperative procurement authorized under § 13-1-135 or contract which qualify under § 13-1-129 is permitted and does not constitute ‘piggybacking.’”

REPLY: This clarifying language was accepted and inserted into the Rule.

COMMENT: regarding various sections: “Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.”

REPLY: This comment was offered to increase clarity of the meaning of “Award” in certain contexts. It also appeared to be offered in order to maintain consistency throughout the Rule in regard to such definition. All such changes were accepted into the final version of the Rule.

COMMENT: regarding the entire Rule: questioning whether the State Purchasing Agent was attempting to exert authority over local public bodies.

REPLY: The State Purchasing Agent is not attempting, through the new Rule, to exert authority over local public bodies. This is made clear in Section 1.4.1.2 which states the Rule does not apply to local public bodies. That said, however, Section 1.4.1.94 NMAC clearly does state the Purchasing Agent’s authority over local public bodies in terms of the new law regarding Chief Procurement Officers and their registration and certification. Beyond that, the Rule, as newly-written, does not attempt to exert nor state that it is exerting, any more authority over local public bodies than past formations of the Rule have done.