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STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT
PURCHASING DIVISION

Administrative Services Division
(505) 827-2000

Building Services Division
(505) 476-2425

Property Control Division
(505) 827-2141

Purchasing Division
(505) 827-0472

Risk Management Division
(505) 827-2036

State Printing & Graphic Services Bureau
(505) 476-1950

Transportation Services Division
(505) 827-1958

June 18, 2013

SPD POLICY MEMO #FY13-006

New Mexico State Use Act Implementation Update

This Policy Memo rescinds SPD Policy Memo #FY10-006, dated September 16, 2009, "NM State Use Act Implementation"

The New Mexico State Use Act (NMSA 1978, Section 13-1C-1 et. seq.) became effective as of June 17, 2005. Over the last several years, it has become fairly well established but there is still a great deal of growth to be undertaken.

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

Per statute, the Central Non-Profit Agency ("CNA") has the right of first refusal to provide any service (service as used in this memo includes professional services) by an agency if that service appears on a list of potential services approved by the Council on behalf of the CNA. The list of potential services can be found on the CNA's website. If the CNA, through one or more of its qualified services providers, can provide the required service then a contract is entered into between the CNA and the using agency.

Such procurements are exempt from the Procurement Code.

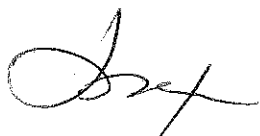
All agencies must present all needs for services that appear on the list published by the CNA to the CNA before proceeding with any other procurement method. If the CNA informs the agency, **in writing**, that the CNA does not have a qualified service provider which can perform the service, the agency may then and only then proceed with the appropriate alternative procurement method. Please note that the State Purchasing Division ("SPD" for general services) and the Department of Finance and Administration/Contracts Review Bureau ("DFA/CRB" for professional services) will require a copy of the CNA's refusal to offer a service provider to perform the requested services before going forward with any agency's requests for other procurement methods.

For those procurements which are not processed through either SPD or DFA/CRB, it is incumbent upon agencies to ensure that they are complying with the law and that the CNA is being afforded the right of first refusal as is set forth in statute.

For those situations in which an agency procures a multi-year contract, the required services need be submitted to the CNA only before the Invitation For Bid or Request for Proposals is issued. If the CNA cannot offer a service provider to provide the required services, and the agency then proceeds to another procurement method which results in a multi-year contract, there is no need for any further request for these particular contracted services during the term of that contract. Because the services offered by the CNA change over time, however, once the multi-year contract ends and a new procurement is undertaken, the CNA's right of first refusal once again becomes the required first step in the new procurement process.

By this same reasoning, if the SPD has established a Price Agreement, an agency may make purchases pursuant to that Price Agreement without first offering the services to the CNA. This is because SPD will have already offered the services to the CNA for its right of first refusal before issuing the IFB or RFP that resulted in that particular Price Agreement.

Please note that if an agency has any issue with a determination made by the CNA, the proper avenue to address such an issue is directly with the CNA and, in some cases, the service provider. The State Purchasing Agent, while a member of the State Use Act Council which oversees the CNA, does not have any direct, individual authority over the CNA or the State Use Act itself.

A handwritten signature in black ink, appearing to read 'Lawrence O. Maxwell', with a stylized, cursive script.

Lawrence O. Maxwell
State Purchasing Agent