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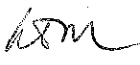
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TO: Executive Agencies, Local Public Bodies, Universities, Public Schools Facilities Authority

FROM: Lawrence O. Maxwell 
State Purchasing Agent

DATE: November 14, 2013

RE: The Use of "Piggybacking"

In response to our recently adopted new Purchasing Regulations (see NMAC 1.4.1 *et. seq.*), State Purchasing has received several inquiries regarding the practice of so-called "piggybacking." The following is State Purchasing's view of this issue.

To begin, a Price Agreement means "a definite quantity contract or indefinite quantity contract which **requires** the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any." [emphasis added]

There is no requirement for a contractor to furnish anything without privity of contract between the parties. An exchange of letters "allowing" a vendor to sell to a non-contracted entity and "permitting" a vendor to sell to a non-contracted entity would not establish privity of contract nor would it "require" any vendor to accept such a situation.

In a price agreement situation, generally speaking, State Purchasing procures items or services "on behalf of" all the entities in the state. This is a cooperative procurement (under NMSA 1978 § 13-1-135) which allows all state entities, including local public bodies, to purchase from that contract.

When an agency procures goods or services for itself from a particular vendor and enters into an entity-vendor specific contract, that procurement is useable only by that entity. To allow other entities to access that agreement ("piggyback") would be to frustrate the purposes of the Procurement Code (fairness to vendors and transparency of purchasing).

State Purchasing implementation of statute and rule, therefore, is that other entities may access an agreement that was procured cooperatively on behalf of these other entities but cannot access a contract that exists only between the two parties involved (entity and vendor).

In order to make a procurement accessible to other entities, the procuring entity must make clear in the solicitation (whether IFB or RFP) that the procurement is being done "on behalf of" itself *as well as* other

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entities in general, or other specific entities, etc. This way, vendors know going in what they are actually bidding on or offering on and can therefore adjust their prices and interests accordingly. This comports with the Procurement Code's stated goals of fairness to all vendors as well as the transparency of the purchasing system.