

Doing Business with State of New Mexico

Website: www.generalservices.state.nm.us/spd/index.html

New Mexico and New York Resident Business/Contractors and Manufacturers Preference

Pursuant to the laws of New Mexico, a Resident Business, Resident Contractor and/or Resident Manufacturer of New Mexico or New York shall be given a 5 percent preference in the awarding of contracts for furnishing of materials, items of tangible personal property or construction provided they have qualified with the State Purchasing Agent either as a Resident Business or Resident Contractor by making application to the State Purchasing Agent and receiving from him a Certification Number. By registering and paying the fee you will automatically receive Invitations for Bid/Proposals as this office receives them from the using agencies.

A non-resident business, contractor or manufacturer may nonetheless be a winning bidder: "When bids are received only from nonresident businesses and resident manufacturers and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the nonresident business when multiplied by a factor of .95." See 13-1-21 NMSA.

Section 1.4.1.17 NMAC: "the State Purchasing Agent shall send copies of the notice of Invitation for Bids involving the expenditure of more than twenty thousand dollars (\$20,000.00) to those businesses which have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services, and which have paid any required fees.

Vendor's Application for Registration is online with instructions. Return completed, signed form along with your registration fee to Office of the State Purchasing Agent. Assuming all information requested has been provided, your name will be added to appropriate bidders' list for

commodities and/or services you have noted. From that point, as Requests for Purchase are received in particular areas you have registered in, you will automatically receive Requests for Bids/Proposals or a notice thereof.

Legal Procurement Methods

The State Procurement Code was enacted by legislative action to provide guidelines and requirements for the spending of State dollars. The Procurement Code can be found at <http://www.generalservices.state.nm.us/spd/index.html>. Updates are periodically issued revising the requirements and methodology of procurement and must be followed by all state entities.

The New Mexico Procurement Code allows for three (3) types of procurement actions; Competitive, Sole Source, and Cooperative Agreement. These procurement methodologies are described as follows, and should be noted that each is appropriate to particular conditions or environment of the purchase. Not all methodologies apply to all situations.

Competitive

The procurement code's preferred method of procurement is through competition. This can be accomplished through either the Invitation to Bid (ITB) or the Request for Proposal (RFP) process. In each case vendors compete for the business, essentially identifying the current market price for the product or service being acquired.

Invitation to Bid (ITB)

The Invitation to Bid process is the fastest, generally easiest competitive procurement method and is used to acquire commodity-type products and services. The need must be able to be filled by a number of suppliers providing essentially the same item for the ITB process to be a viable option. The procurement is advertised and specifications and response requirements are distributed to registered vendors. Sealed bids are received and on the closing date bids will be publicly opened. Provided the supplier is responsible and the supplier's product or service meets the specified requirement(s), the offeror providing the lowest price will receive the award. There is no ability to select a particular vendor, or to negotiate the price (please note that there are certain conditions that may allow for negotiation in event the bids exceed the available funding). This is the default method of formal procurement.

Request for Proposal (RFP)

The Request for Proposal is a more complex and time consuming procurement method. The RFP process is used when there are varying products or services that could *potentially* meet the State's needs and detailed evaluation of the offeror's product or solution(s) is necessary to determine which offered product or solution will provide the "best value" to the State. It entails development of a detailed statement of work defining the State's need and also provides/explains the criteria to be employed by the evaluation committee in rating the proposals. Frequently used criteria for evaluation include technical compliance to the requirements, stability of offeror, experience and education of key personnel to work on the project, and price offered. Unlike the ITB process, cost is not the sole criteria in the evaluation. Life cycle costs are often evaluated and scored. A proposal providing the lowest price will not necessarily receive the bid. Prior approval is required to use the RFP process for any procurement other than Pure Professional Services exceeding \$50,000.00

Sole Source

By definition, sole sources are not encouraged by the State Purchasing Division because pricing and terms and conditions are difficult or impossible to negotiate. No open market exists to ensuring reasonable pricing. When this situation occurs and there are no alternatives, the State will issue a contract or agreement for a limited term to provide the product or service. Maintenance of proprietary systems and proprietary software are examples of sole source procurements.

Cooperative Agreements

Cooperative agreements can be a useful procurement methodology allowed by the Procurement code. They are based upon already negotiated agreements, allowing the State to "piggy-back" on work that has been done by others. There are restrictions on the usage of cooperative agreements as described below.

General Services Agreements (GSA)

General Services Agreements (GSA) are contracts placed by the General Services Administration of the United States Federal government. They are negotiated agreements intended for use by various government entities to streamline the federal procurement process. The Procurement Code DOES NOT allow the state of New Mexico to utilize these contract vehicles directly. It DOES allow the State Purchasing Division to "mirror" the GSA contracts, by issuing an exact duplicate of the GSA agreement for the State of New Mexico.

The New Mexico "mirror" contracts are required to include all terms, conditions, and pricing included in the GSA agreement on which it is based. There is no ability to extend a New Mexico contract beyond the scope or expiration date of the GSA agreement.

Western States Contracting Alliance (WSCA)

WSCA was formed by fifteen (15) western state members, including New Mexico, of the National Association of State Purchasing Officials (NASPO). This organization has established price agreements for various products, receiving substantial savings as a result of the collective volumes. The State Purchasing Agent may allow New Mexico governmental entities to utilize the WSCA agreements provided New Mexico advertised and participated in the procurement.

Who Gets the Contract?

The State Purchasing Division is required by law to competitively bid and award contracts to the lowest responsible bidder.

Who is the lowest responsible bidder? The lowest responsible bidder is one who:

Meets specifications;

Meets terms and conditions of the bid, formal or informal;

Provides the lowest price.

Types of Contracts

Term Contract purchase is for items in great demand throughout the year. Vehicles, tires, and office equipment, are some examples of the vast number of term contracts issued. These contracts are generally let for one (1) year only.

An **Open Market purchase** is for a onetime purchase. State agencies request these purchases when the value exceeds their small purchase authority of \$1,500.00.

Term Contracts:

Statewide, Agency and Multi-Term Agreements

- **Statewide Price Agreement** - The State Purchasing Office establishes statewide price agreements for commodities or services commonly used in volume by state agencies. The State allows Local Public Bodies, (counties, cities, schools, etc.) to purchase from these contracts. These contracts are awarded by the **FORMAL SEALED BID** and are issued for definite periods of time, usually one (1) year.
- **Agency Price Agreement** - This term contract is issued for estimated quantities for specific products or family of products, or services for use by individual state agencies. An example of this type of price agreement would be for janitorial services for a particular agency or a one-time purchase of a forklift. The Formal Sealed Bid is generally used; however, the Informal Bid may be used if the total purchase is estimated to be less than \$20,000.00.
- **Multi-Term Contract** - A multi-term contract of less than \$25,000.00 per year may be entered into for any term deemed to be in the best interest of a state agency not to exceed four (4) years. Contracts of over \$25,000 may be entered into for any period of time not to exceed eight (8) years.
- **OPEN MARKET purchases:**
 - **Quotation**
 - An Informal Quote, is allowed when the purchase totals less than \$20,000.00 but more than \$10,000.00. This solicitation does not require advertisement in the newspapers but does require no fewer than three businesses solicited to submit written or oral quotations. Does not require a public opening.
 - **Formal Bid**
 - A Formal Bid, also called a Sealed Bid, must be made if the purchase exceeds \$20,000.00.
 - These bids must be legally advertised in at least 3 newspapers of general circulation in the state and sent to all vendors registered with the State for the particular Commodity.

- These bids must be sealed and opened in public at a definite date, time, and place. TIGHT BID SECURITY IS MAINTAINED UNTIL BID OPENING.
- All Invitations to Bid and Request for Proposals are also posted on the SPD Website.

Small Value Authority-this is a price limit to which an agency may purchase without going through competitive bid, however at the best obtainable price. That limit is \$10,000.00. Those purchases over \$10,000.00 to their assigned limit must be bid.

Professional Service Contracts - Contracts for more than \$50,000.00 shall be solicited, negotiated, and awarded through a competitive, sealed proposal process. Contracts for less than \$50,000.00 may be solicited, negotiated, and awarded without a competitive sealed process if certain conditions have been met. (Because of the complexity of professional services, you may wish to visit with one of the Procurement Specialists in State Purchasing).

Getting on the bid list will not automatically result in contracts or purchase from you. In accordance with Section 13-1-172 NMSA 1978, any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the State Purchasing Agent. If, pursuant to Section 13-1-99 NMSA 1978, the procurement is excluded from procurement through the State Purchasing Agent, the protest shall be made to the central purchasing office having responsibility for initiating the solicitation. The protest must be submitted in writing within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to the protest. The protest shall: include the name and address of the protestant; include the solicitation number; contain a statement of the grounds for protest and specify the ruling requested from the State Purchasing Agent or the central purchasing office.

As to construction contracts:

"The award and execution of contracts for major construction, including but not limited to roads, bridges, airports, buildings and dams, shall be made by the governing authority of the using agency. The procurement officer responsible for the procurement shall give notice to prospective bidders pursuant to Section 13-1-104 NMSA 1978." See 13-1-100 NMSA.

Contact Information

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