

 <p>CD-113200</p>	<p>NEW MEXICO CORRECTIONS DEPARTMENT</p> <p><i>"We commit to the safety and well-being of the people of New Mexico by doing the right thing, always."</i> Courage Responsibility Ethics Dedication - CREDibly serving the public safety of New Mexico</p>	
	<p>ISSUE DATE: 11/13/90</p> <p>EFFECTIVE DATE: 11/13/90</p>	<p>REVIEW/REVISED: 03/17/15</p>
	<p>TITLE: Corrections Industries Procurement Regulations</p>	

AUTHORITY:

- A. NMSA 1978, Sections 33-8-6 and 13-1-98 (I), as amended.
- B. Policy CD-110100.

REFERENCE:

- A. Policy *CD-032200* and *CD-025100*.
- B. NMSA 1978 Sections 13-1-1 to 13-1-199, as amended.
- C. Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-3. As amended.

PURPOSE:

To ensure that Corrections Industries Division, in its procurement activities, functions in accordance with the General Services Department (GSD) and the Department of Finance and Administration (DFA) regulations, with the approval of the Corrections Commission and in compliance with applicable provisions of the New Mexico Corrections Department (NMCD) Code of Ethics.

APPLICABILITY:

All employees of the Division and especially to employees responsible for the procurement of goods and services.

FORMS:

None

ATTACHMENTS:

None

DEFINITIONS:

- A. Brand-Name Specification: a specification limited to describing an item by manufacturer's name or catalog number.

- B. Best Obtainable Price: lowest price obtained when no fewer than three valid sources are contacted for quotes.
- C. Bid Process: no fewer than three businesses shall be solicited to submit written price quotations. The written bid must be submitted on the vendor's official stationery with an authorizing signature and may be provided by either mail, fax or e-mailed with electronic signature.
- D. Business: any corporation, partnership, individual, joint venture, association or any other private legal entity.
- E. Central Purchasing Office: that office or officer within the Financial Management Bureau responsible for the control of procurement of items of tangible personal property, services or construction.
- F. Confidential Data: any data, for which a bidder or an offeror has made a written request for confidentiality, to the extent that the request is determined to be valid.
- G. Confidential Information: any information which is available to an employee because of the employee's status as an employee of a state agency or a local public body and which is not a matter of public knowledge or available to the public on request.
- H. Construction: building, altering, repairing, installing or demolishing in the ordinary course of business.
- I. Contract: any agreement for the procurement of items of tangible personal property, services or construction.
- J. Contract Modification: any written alteration in the provisions of a contract accomplished by mutual action of the parties to the contract.
- K. Contractor: any business having a contract with a state agency or a local public body.
- L. Cooperative Agreement: procurement conducted by or on behalf of more than one state agency or local public body, or by a state agency or local public body with an external procurement unit.
- M. Current Ownership or Current Officers and Directors: those owners, officers and directors of a business as of the date of filing the ownership disclosure pursuant to NMSA 1978, Section 13-1-101.

- N. Designee: a representative of a person holding a superior position who has been given the authority to act on behalf of the supervisor on the particular matter.
- O. Determination: the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
- P. Direct or Indirect Participation: involvement through decision, approval, disapproval, recommendation, formulation of any part of a purchase request, influencing the content of any specification, investigation, auditing or the rendering of advice.
- Q. Employee: an individual receiving a salary, wages or per diem and mileage from a state agency or a local public body whether elected or not and any non-compensated individual performing personal services as an elected or appointed official or otherwise for a state agency or a local public body.
- R. Equal Specification: a specification describing one or more items by manufacturer's name or catalog number to indicate the standard of quality, performance or other pertinent characteristics and providing for the substitution of equivalent items.
- S. Financial Interest: holding a position in a business as officer, director, trustee or partner or holding any position in management or ownership of more than five percent (5%) interest in a business.
- T. Gratuity: a payment, loan, subscription, advance, deposit of money, service or anything of more than nominal value, received or promised, unless consideration of substantially equal or greater value is exchanged.
- U. Immediate Family: a spouse, children, parents, brothers and sisters.
- V. Multi-Term Contract: a contract having a term longer than one fiscal year.
- W. Multiple Source Award: an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one bidder or offeror.
- X. Price Agreement: 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.

- Y. Procurement: purchasing, renting, leasing, lease purchasing or otherwise acquiring items of tangible personal property, services or construction and all procurement functions, including but not limited to preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration.
- Z. Procurement Officer: any person or a designee authorized by a state agency or a local public body to enter into or administer contracts and make written determinations with respect thereto.
- AA. Professional Services: the services of architects, archaeologists, engineers, land surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accounts, lawyers, psychologists, planners, researchers and persons or businesses providing similar services.
- BB. Purchase Order: the document issued by the state purchasing agent or a central purchasing office which directs a contractor to deliver terms of tangible personal property, services or construction pursuant to an existing contract.
- CC. Purchase Request: the document by which a using agency requests that a contract be obtained for a specified service, construction of item of tangible personal property and may include but is not limited to the technical description of the requested item, delivery schedule, transportation requirements, suggested sources of supply and supporting information.
- DD. Regulation: any rule, order or statement of policy, including amendments thereto and repeals thereof, issued by a state agency or a local public body to affect persons not members or employees of the issuer.
- EE. Request for Proposals: all documents, including those attached or incorporated by reference, used for soliciting proposals.
- FF. Services: the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports and other materials which are merely incidental to the required performance. "Services" include the furnishing of insurance but does not include construction or the services of employees of a state agency or a local public body.

GG. Specification: a description of the physical or functional characteristics or of the nature of items of tangible personal property, services or construction. "Specification" may include a description of any requirement for inspecting or testing, or for preparing items of tangible personal property, services or construction for delivery.

HH. Tangible Personal Property: tangible property other than real property having a physical existence, including but not limited to supplies, equipment, materials and printed material.

POLICY:

All procurement policies and regulations of Corrections Industries, and changes thereto, are subject to review by the Purchasing Section of the Financial Management Bureau of the Corrections Department Administrative Services Division and adoption by the Corrections Commission and reviewed and approved by the State Purchasing Division of the General Services Department.



Gregg Marcantel, Secretary of Corrections
New Mexico Corrections Department

03/17/15

Date

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AUTHORITY:

Policy *CD-113200*

PROCEDURES:

- A. The following items are exempt from the provisions of procurement regulations:
 - 1. Purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services.
 - 2. Purchases of books and periodicals from the publishers or copyright holders thereof.
 - 3. Shipping by common carrier or private conveyance.
 - 4. Staff and Board travel covered under the state mileage and per diem act.
 - 5. Minor purchases consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required.

- B. All procurement for Corrections Industries Division shall be performed by the Division's central office purchasing office except as otherwise provided in these procurement regulations.
 - 1. All requests for purchase submitted to the Division's central purchasing office must be approved by the appropriate facility manager, the appropriate manager, the Director or designee.
 - 2. Small purchases of goods or services having a value not exceeding \$5000 may be purchased by the Division's central purchasing office by issuing a direct purchase order to a contractor based on the best obtainable price. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

3. Goods or services having a value exceeding \$5000, excluding raw materials, require written price quotations from no fewer than three businesses, which must be recorded and placed in the procurement file.
4. Award shall be made to the business offering the lowest acceptable quotation within delivery requirements.
5. For purchases of raw materials, no fewer than three businesses shall be solicited to submit written price quotations. However, quality, adherence to specifications and reliability of supply shall be considered in vendor selection.
6. Prior to award, the contents of any quotation shall not be disclosed to any other business from which a quotation is solicited.
7. The names of the businesses submitting quotations and the date and the amount of each quotation shall be recorded and monitored as a public record.
8. The facility is responsible for inspecting, accepting or rejecting deliveries. The facility shall determine whether the quantity is as specified in the purchase order or contract and whether the quality conforms to the specifications referred to or included in the purchase order or contract.

If inspection reveals that the delivery does not conform to the quantity or quality specified in the purchase order or contract, the facility shall immediately notify the central purchasing office. The Division's central purchasing office shall notify the vendor that the delivery has been rejected and shall order the vendor to promptly make a satisfactory replacement or supplementary delivery. In case the vendor fails to comply, the central purchasing office shall have no obligation to pay for the nonconforming items of tangible personal property. If the delivery does conform to the quantity and quality specified in the purchase order or contract, the facility shall certify to the central purchasing office that delivery has been completed and is satisfactory.

9. No warrant, check or other negotiable instrument shall be issued in payment for any purchase or services, construction or items of tangible property unless the central purchasing office or the facility certifies that the services, construction or items of tangible personal property have been received and meet specifications.
10. All specifications shall be drafted so as to ensure maximum practicable competition and fulfill the requirements of the Division.

- a. A brand name specification may be used only when the Division's central purchasing office makes a written determination that only the identified brand-name items or items will satisfy the needs of the Division.
 - b. The central purchasing office shall seek to identify sources from which the designated brand-name items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable.
 - c. Unless the central purchasing office makes a written determination that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand-name or equal specifications shall include a description of the particular design, function or performance characteristics which are required.
 - d. Where a brand name or equal specification is used in a solicitation, the documentation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.
11. Nothing in these regulations should be interpreted as limiting the ability of the Division to make procurements under existing contracts or enter into cooperative procurement agreements.
- C. Procurements under emergency conditions not permitting other source selections may be made under the following conditions:
1. An emergency condition is a situation that creates a threat to public health, welfare, safety or property such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of such condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:
 - a. The functioning of government;
 - b. The preservation or protection of property; or
 - c. The health and safety of any person.
 2. Emergency procurements shall be limited to those services, construction, or items of tangible personal property necessary to meet the emergency.

3. The Division central purchasing office or a designee may make or authorize others to make emergency procurements when an emergency condition arises; provided that emergency procurements shall be made with such competition as is practicable under the circumstances.
 4. The procedure used shall be selected to assure that the required services, construction, or items of tangible personal property are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
 5. A written determination of the basis for the emergency procurement shall be included in the procurement file.
 6. The Division central purchasing office shall maintain records of emergency procurements for a minimum of three years. The record of each such procurement shall be a public record and shall contain:
 - a. The contractor's name and address;
 - b. The amount and term of the contract;
 - c. A listing of the services, construction, or items of tangible personal property procured under the contract; and,
 - d. The justification for the procurement method.
- D. A contract may be awarded without obtaining price quotes, regardless of cost, when the Division's central purchasing office makes a written determination, after conducting a good-faith review of available sources, that there is only one source for the required items of tangible personal property or services other than professional services. In cases of reasonable doubt, price quotations should be solicited.
1. Any request by a facility that procurement be restricted to one potential contractor shall be accompanied by a written explanation as to why no other will be suitable or acceptable to meet the need.
 2. The Division's central purchasing office shall conduct negotiations, as appropriate, as to price, quantity, delivery and terms, in order to obtain the price most advantageous to the Division.
 3. Sole source determinations will be reviewed and approved by the Department Central Purchasing Office prior to continuing with the procurement process.

- E. The Division's central purchasing office may procure professional services having a value not exceeding \$20,000 without a formal request for proposal. However, at least three businesses should be contacted for written or oral offers before selecting the contractor. The central purchasing office shall negotiate a contract for the required services at a fair and reasonable price. If more than one business is contacted, the contents of one business' offer shall not be disclosed to another business during the negotiation process. Professional services having a value exceeding \$20,000 shall be procured by issuing a formal request for proposals.
1. All contracts for professional services shall be reviewed as to form, legal sufficiency, and budget requirements by the Administrative Services Division and Office of General Counsel of the NMCD and by the DFA.
 2. A multi-term contract for items of tangible personal property, construction of services except for professional services, in an amount under \$25,000 may be entered into for any period of time deemed to be in the best interests of Division not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is \$25,000 or more, the term shall not exceed eight years including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. A contract for professional services may not exceed a term of four years.
 3. Except for contracts that require the contractor to operate on the grounds of Department facilities, no contract governed by these regulations shall contain any provision whereby the Division agrees to indemnify or provide tort liability insurance for any contractor. The indemnification and insurance provisions of contracts that require the contractor to operate on the grounds of Department facilities shall be approved in writing by GSD's Risk Management Division before they become effective.
 4. No contract governed by these regulations shall contain any provision whereby a state agency agrees to indemnify or provide a contractor with insurance for non-tort risks unless the provision has been approved in writing by GSD's Risk Management Division.
- F. A professional service contract may be awarded without competitive sealed proposals when the Division's central purchasing office makes a written determination, after conducting a good-faith review of available sources, that there is only one source for the required professional service. In cases of reasonable doubt, proposals should be solicited. The written determination shall be approved or disapproved in writing by the Secretary of Corrections or a designee and shall include the following information:

1. A detailed sufficient explanation of the reasons, qualifications or unique capabilities that make the prospective contractor a sole source.
 2. The amount and term of the contract.
 3. A listing of the services, construction, or items of tangible personal property procured under the contract.
 4. The justification for the procurement method. The justification shall include any written determinations and written approvals required by any provision of these regulations.
 5. The Division's office shall maintain records of sole source procurements for a minimum of three years.
- G. The Division's central purchasing office, when procuring used items of tangible personal property the estimated cost of which exceed \$5,000 shall request bids as though the items were new, adding specifications that permit used items under conditions to be outlined in the bid specifications including but not limited to requiring a written warranty for at least ninety days after date of delivery, and an independent "certificate of working order" by a qualified mechanic or appraiser.
- H. The Division's central purchasing office when trading in or exchanging used items of tangible personal property the estimated value of which exceeds \$5,000 as part-payment on the procurement of new items of tangible personal property shall have an independent appraisal made of the items to be traded in or exchanged. The appraisal shall be in writing, shall be made part of the procurement file and shall be a public record.
- I. Nothing in these regulations is intended to exempt any Division employee from the penalties of the Procurement Code (NMSA 1978, Sections 13-1-190 through 199). The following legal requirements shall be observed in the conduct of Division procurement activities:
1. It is unlawful for any state agency or local public body employee to participate directly or indirectly in procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract.
 2. All contracts and solicitations therefore shall contain reference to the criminal laws prohibiting bribes, gratuities and kickbacks.

3. It is unlawful for any state agency or local public body employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by which the employee is employed.
 4. It is also unlawful for any state agency or local public body employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.
- J. The NMCD Code of Ethics shall be observed in the conduct of Division procurement activities.
1. Employees of the Division shall conduct themselves in a manner that reflects the highest personal and professional ethics as an officer of the State. Employees are expected to be loyal to the State and devote their full working days to the business to New Mexico. Under no circumstances shall employees knowingly give rise to suspicion of conflict of interests with the State or conflict of interests with the Department, or act in such a way as to adversely affect the Division or adversely affect the employee's ability to perform his/her duties.
 2. Every employee who has a financial interest which he or she believes or has reason to believe may be affected by actions of the Division shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the Department Secretary before entering State employment, and during the month of January every year thereafter.
 3. No employee shall acquire directly or indirectly a financial interest in a business at a time when he or she may reasonably anticipate it may be directly affected by any official act of his or hers.
 4. No employee may directly or indirectly accept or give any compensation, gift, loan, entertainment, favor or service which would tend to give an appearance of impropriety or which might interfere in the discharge of official duties.
 5. Applicable personnel shall not accept any favor or gratuity from any person, firm, corporation or other entity that would affect or appear to affect the person's judgment in the performance of his or her duties in an impartial manner. This does not apply in the case of an occasional non-pecuniary gift that is insignificant in value, a public award, or a loan made in the ordinary course of business.

- K. When procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Regulations, compliance with federal law or regulations shall be compliance with the Procurement Regulations.
- L. Inspection of Public Records

The inspection of public records is governed by the Inspection of Public Records Act, NMSA 1978, and Sections 14-2-1 through 14-2-3. To the extent that any provision of these regulations conflicts with the Inspection of Public Records Act, as interpreted by the courts of this state, that act shall control. Furthermore, no obligation to keep data confidential that is contained in these regulations is intended to create any liability that would not otherwise exist under state law.



Gregg Marcantel, Secretary of Corrections
New Mexico Corrections Department

03/17/15
Date