

This is an amendment to 2.40.5 NMAC, Sections 7, 8, 9, 10, 11, 14 and 15, effective January 15, 2011.

**2.40.5.7 DEFINITIONS:**

- A. "Appreciable contribution" means significant labor of individuals with disabilities applied to a service.
- B. "Brokering" means negotiating contracts, as an agency, between organizations or individuals, for compensation.
- C. "Central ~~non-profit~~ nonprofit agency" means a nonprofit agency approved pursuant to rules of the council to facilitate the equitable distribution of orders and services of:
- (1) qualified individuals; and
  - (2) community rehabilitation programs.
- D. "Council" means the New Mexico council for purchasing from persons with disabilities.
- E. "Community rehabilitation program" means a nonprofit entity:
- (1) that is organized under the laws of the United States or this state, operated in the interest of person with disabilities and operated so that no part of the income which inures to the benefit of any shareholder or other person;
  - (2) that complies with applicable occupational health and safety standards as required by federal or state law; and
  - (3) that, in the provision of services, whether or not procured under the State Use Act, employs during the state fiscal year at least seventy-five percent ~~person~~ (75%) persons with disabilities in direct labor for the provision of services. Hours of work shall be used to calculate number of persons working in order to determine compliance to the seventy -five percent (75%) ratio, based on standard full time equivalent of 2080 hours per year equating to one person.
- F. "Integration" means equal access for non-disabled and individuals with disabilities: the process of ensuring employment opportunities to all regardless of disability.
- G. "Local public body" means a political subdivision of the state and political subdivision agencies, instrumentalities and institutions.
- H. ~~["Individual with a disability"]~~ "Persons with disabilities" means persons who have a mental, intellectual or physical impairment that constitutes or results in substantial impediment to employment as defined by the federal Rehabilitation Act of 1973, and shall be certified eligible for participation by completing council approved documentation through the central nonprofit agency, unless the person has prior presumptive eligibility as follows. A person who is receiving services pursuant to an individualized plan for employment from the vocational rehabilitation division of the public education department or from the commission for the blind or the federal veterans affairs administration shall be presumed to be a person with a disability, as shall a person who is receiving supplemental security income or social security benefits based on disability.
- I. "Provider" means a community rehabilitation program or qualified individual who has been approved to offer services under contract to the central nonprofit agency.
- ~~[J.]~~ J. "Qualified individual" means a person with a disability who is a business owner, or a business that is primarily owned and operated by persons with disabilities that employs at least seventy-five percent (75%) persons with disabilities in the provision of direct labor, which has been approved by the council to provide services to state agencies and local public bodies.
- ~~[J.]~~ K. "State use eligible services" means ~~[these]~~ all services which are to be provided by persons with disabilities and which the council determines are suitable for sale to state agencies and local public bodies.
- ~~[K.]~~ L. "State purchasing ~~[office]~~ agent" means the director of the state purchasing division of the general services department.
- ~~[L.]~~ M. "State Use Act program" means a program enacted through legislation by the New Mexico state legislature that allows meaningful employment opportunities through state and local government contracts to ~~[person]~~ persons with disabilities.
- ~~[M.]~~ N. "Value added" means direct labor involved in delivering services performed by persons with disabilities.

[2.40.5.7 NMAC - N, 03/30/3007; A, 01/15/2011]

**2.40.5.8 DETERMINATION OF WHICH SERVICES PROVIDED BY PERSONS WITH DISABILITIES ARE SUITABLE FOR SALE TO STATE AGENCIES AND LOCAL PUBLIC BODIES [BY PERSONS WITH DISABILITIES]:**

- A. Services provided by persons with disabilities suitable for sale to state agencies and local public bodies:
- (1) must be within the competency of the prospective provider;
  - (2) must have potential to provide positive, integrated employment outcome for persons with disabilities;
  - (3) may be approved as statewide, or by specific contract offering [or] by a state agency or local public body;
  - (4) require the approval by the council prior to being offered.

B. Council determination of suitability extends to specific individual contracts procured under a given service; the council may accept or reject a given contract as suitable based on criteria established under rule and statute, such as meeting appreciable contribution requirements, ratio requirements, impact or fair market pricing requirements.

~~[B.]~~ C. Any [service] potential contract that entails brokering solely on the part of the community rehabilitation program is not suitable for the State Use Act program. An appreciable contribution to the services must be made by persons with disabilities.

~~[C.]~~ D. The decision that the labor of persons with disabilities constitutes appreciable contribution shall be at the discretion of the council.

~~[D.]~~ ~~Create a list of the identified services.~~  
[2.40.5.8 NMAC - N, 03/30/2007; A, 01/15/2011]

#### 2.40.5.9 ESTABLISHING, MAINTAINING AND PUBLISHING OF A LIST OF ALL SUITABLE SERVICES:

A. The council shall establish, approve and revise a list of suitable services through a contract with a ~~[community not profit]~~ central nonprofit agency on an as needed basis.

B. Copies of the list shall be published at the state purchasing office and on-line at appropriate state websites, on a website maintained by the central ~~[non-profit]~~ nonprofit agency, and may also be advertised in New Mexico business publications.

C. The council requires that the central ~~[non-profit]~~ nonprofit agency to establish procedures to submit a given service for council approval. The central ~~[non-profit]~~ nonprofit agency shall be responsible for providing the council with information to substantiate the conditions for service determination.

D. Once approved by the council, services shall be included in a master list of approved services.

E. New services may be added to the list upon a majority vote at any council meeting.  
[2.40.4.9 NMAC - N, 03/30/2007; A, 01/15/2011]

#### 2.40.5.10 ESTABLISHING AND VERIFYING FAIR MARKET PRICE:

A. The council shall verify and revise the fair market prices ~~[through a contract with the central non-profit agency,]~~ on an as needed basis.

B. The council shall revise the fair market prices in accordance with the changing market conditions to ensure that contracted services offer the best value for state agencies and local public bodies.

C. The pricing standard for services should be as close as possible to prevailing market price not including the central ~~[non-profit]~~ nonprofit agency fee.

D. The council shall set the price within a range submitted by the central ~~[non-profit]~~ nonprofit agency taking into consideration the benefits associated with employment of persons with disabilities.

E. Fair market price may be established based on:

(1) prices paid for similar services by federal, state and local public bodies and by private businesses;  
or

(2) the actual cost of performing the services at a community rehabilitation program, determined by use of a council approved cost analysis worksheet, taking into consideration the benefits associated with employing persons with disabilities; or

(3) any other accepted business method acceptable to the council.

F. When considering a contract award, in order to ensure that services offer the best value for state agencies and other public bodies, the central nonprofit agency shall determine suitability of individual contracts to be provided under each service, including, but not necessarily limited to:

(1) external requirements that proscribe the use of a specific provider, such as:

(a) contracts which must be awarded to providers who are sanctioned by the federal corporation for national and community services;

(b) mandated projects that must be awarded to an area agency on aging pursuant to federal law;  
(2) significant adverse impact to a state agency or local public body, when contracting for professional services, resulting in the loss of content knowledge associated with confidential, proprietary, or attorney/client privileged information; in such instances the government's central purchasing office shall notify the central nonprofit in writing prior to contract award.

G. The council chairperson shall have the authority to give tentative approval for specific contracts for work by the central nonprofit agency, between council meetings, subject to ratification by the full council at its next scheduled meeting, when time is of the essence for the purchaser.

H. The council shall establish procedures for verifying fair market price, which shall be published on the central nonprofit agency's website.

[2.40.5.10 NMAC - N, 03/30/2007; A, 01/15/2011]

**2.40.5.11 PROCEDURE TO CERTIFY ELIGIBLE COMMUNITY REHABILITATION PROGRAMS AND QUALIFIED INDIVIDUALS:** The certification procedure to determine eligible [services] provider members shall consist of a two part process:

A. Certification of eligibility as a qualified individual with a disability or community rehabilitation program as defined by statute.

B. Verification of ability to perform the service.

[2.40.5.11 NMAC - N, 03/30/2007; A, 01/15/2011]

**2.40.5.14 OTHER MATTERS RELATED TO THE STATE USE ACT:**

A. It is the council's ~~policy~~ responsibility to identify, respond to, and equitably distribute, to as broad a base of eligible participants as possible, all relevant contract opportunities.

B. The council reserves the authority to make final contract distribution decisions based on the above policy and process, as well as any other unique factors or special circumstances. The central non-profit agency shall establish an appeals process for contract distribution or disputes, and for resolving price and quality-related disputes between parties in the exercise and administration of the State Use Act program, with the council being the final determining body. This process shall be applicable to state and local public body purchasers obtaining services under the State Use Act program, and nonprofit agencies and qualified individuals with a disability who own businesses certified by New Mexico abilities and providing services under state use contracts.

C. All regular meetings of the council shall include an agenda item for an open public forum. The council shall set aside a specific time at each meeting for the public, government officials, and businesses to address the council regarding any issues and concerns related to the State Use Act and its implementation. The council shall use this ongoing mechanism to solicit ongoing feedback, to promote the intention of the State Use Act to create employment opportunities for persons with disabilities, while promoting efficiency and best value for state and local government purchasing entities.

D. Meetings shall be conducted according to requirements of the Open Meetings Act.

~~[E.]~~ E. The council shall address any other matter necessary to the proper administration of the State Use Act.

[2.40.5.14 NMAC - N, 03/30/2007; A, 01/15/2011]

**2.40.5.15 INTEGRATION, FAIR PAY AND ADDED VALUE:**

~~A.~~ [It is the council's policy to] The council shall ensure that the:

~~[A-]~~ (1) work provides opportunities for integration with non-disabled persons;

~~[B-]~~ (2) work provides fair pay based on prevailing wages;

~~[C-]~~ (3) work provides equitable opportunities for the employment of people with disabilities; and

~~[D-]~~ (4) services provide added value.

B. Community rehabilitation programs and qualified individuals must employ during the state fiscal year at least seventy-five percent (75%) persons with disabilities in the provision of direct labor. In determining ratio calculation, all employees providing direct labor on all state use contracts shall be counted. Hours of work shall be used to calculate the ratio.

C. In the event of failure to meet the ratio requirement, the council may request a remediation plan from the provider specifying actions and timelines to meet requirement, which the council must approve. In the event of provider failure to provide an adequate remediation plan, or meet remediation plan commitments, the council may place a moratorium on new state use work by that provider, or assign the contract to another provider.

or in the event of persistent ratio problems, ban the provider from eligibility to participate in the State Use Act program for up to a two year period.

[2.40.5.15 NMAC - N, 03/30/2007; A, 01/15/2011]