

TITLE 2 PUBLIC FINANCE
CHAPTER 40 EXPENDITURE OF PUBLIC FUNDS
PART 5 PURCHASING OF SERVICES FROM PERSONS WITH DISABILITIES

2.40.5.1 ISSUING AGENCY: New Mexico Council for Purchasing from Persons with Disabilities, 435 Saint Michael's Drive, Building D, Santa Fe, New Mexico.
[2.40.5.1 NMAC - N, 03/30/2007]

2.40.5.2 SCOPE: All state agencies and local public bodies.
[2.40.5.2 NMAC - N, 03/30/2007]

2.40.5.3 STATUTORY AUTHORITY: NMSA 1978, Section 13-1C-1 through Section 13-1C-7.
[2.40.5.3 NMAC - N, 03/30/2007]

2.40.5.4 DURATION: Permanent.
[2.40.5.4 NMAC - N, 03/30/2007]

2.40.5.5 EFFECTIVE DATE: 03/30/2007, unless a later date is cited at the end of a section.
[2.40.5.5 NMAC - N, 03/30/2007]

2.40.5.6 OBJECTIVE: This regulation establishes certain procedures with respect to purchasing of services from persons with disabilities and clarifies which services provided by persons with disabilities are suitable for sale to state agencies and local public bodies.
[2.40.5.6 NMAC - N, 03/30/2007]

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 agency" means a nonprofit agency approved pursuant to rules of the council to facilitate the equitable distribution or 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 of 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 with disabilities in direct labor for the provision of services.
- 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 the political subdivision agencies, instrumentalities and institutions.
- H.** "Individual with a disability" means persons who have a mental or physical impairment that constitutes or results in substantial impediment to employment as defined by the federal Rehabilitation Act of 1973. A person who is receiving services pursuant to an individualized plan for employment from the vocational rehabilitation of the public education department or from the commission for the blind shall be presumed to be a person with disability, as shall a person who is receiving supplemental security income or social security benefits based on disability.
- I.** "Qualified individual" 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 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. “Services” means those services which are to be provided by persons with disabilities and which are suitable for sale to state agencies and local public bodies.

K. “State purchasing office” means the director of the purchasing division of the general services department.

L. “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 with disabilities.

M. “Value added” means direct labor involved in delivering services and performed by persons with disabilities.

[2.40.5.7 NMAC - N, 03/30/2007]

2.40.5.8 DETERMINATION OF SERVICES 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. Any service which 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. 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]

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 non-profit 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 agency, and may also be advertised in New Mexico business publications

C. The council requires that the central non-profit agency to establish procedures to submit a given service for council approval. The central non-profit 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.

[2.40.5.9 NMAC - N, 03/30/2007]

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 agency fee.

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

[2.40.5.10 NMAC - N, 03/30/2007]

2.40.5.11 PROCEDURE TO CERTIFY ELIGIBLE COMMUNITY REHABILITATION PROGRAMS AND QUALIFIED INDIVIDUALS: The certification procedure to determine eligible services 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]

2.40.5.12 PROCEDURE FOR APPROVAL OF CENTRAL NON-PROFIT AGENCY:

A. The council shall establish a procedure for approval of a central non-profit agency that shall hold contracts, facilitate the equitable distribution of orders for services to be procured by state agencies and local public bodies and market approved services to state agencies and local public bodies.

B. The council shall request proposals from applicants which provide evidence that the central non-profit agency is a private, non-profit entity within the state which:

(1) has a mission which includes employment of persons with disabilities;

(2) is not a direct-service provider;

(3) can negotiate contracts;

(4) has knowledge of state and local governmental contracting policies and procedures;

(5) can demonstrate independence to equitably distribute contracts for procured services;

(6) can manage the scale of operations required; and

(7) has an approved operations manual which details all policies and procedures for operation of the

CENTRAL NON-PROFIT AGENCY.

C. Approval of the central non-profit agency shall be by a minimum of two-thirds majority vote of the council.

[2.40.5.12 NMAC - N, 03/30/2007]

2.40.5.13 PROCEDURES FOR OPERATION OF CENTRAL NON-PROFIT AGENCY, INCLUDING FEE STRUCTURE:

A. The council shall ensure that the central non-profit agency has an approved operations manual which details all policies and procedures for operation of the central non-profit agency.

B. The council shall establish a fee to be paid to the central non-profit agency on the basis of contracts procured from state agencies and other local public bodies. The fee will be added to the fair market price paid by the state agencies and local public bodies.

[2.40.5.13 NMAC - N, 03/30/2007]

2.40.5.14 OTHER MATTERS RELATED TO THE STATE USE ACT:

A. It is the council's policy 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 with the council being the final determining body.

C. 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]

2.40.5.15 INTEGRATION, FAIR PAY AND ADDED VALUE: It is the council's policy to ensure that the:

A. work provides opportunities for integration with non-disabled persons;

B. work provides fair pay based on prevailing wages;

C. work provides equitable opportunities for the employment of people with disabilities;

D. services provide added value.

[2.40.5.15 NMAC - N, 03/30/2007]

HISTORY OF 2.40.5 NMAC: [RESERVED]