

This is an amendment to 1.4.1 NMAC, Section 94, effective 1/16/2018.

1.4.1.94 CHIEF PROCUREMENT OFFICER REGISTRATION AND CERTIFICATION:

~~A. Registration. On or before January 1, 2014, and every time thereafter that a chief procurement officer is hired, each state agency and local public body shall provide to the state purchasing agent the name of the state agency's or local public body's chief procurement officer and information identifying the state agency's or local public body's central purchasing office, if applicable.~~

~~B. Information required. The information required from the state agency or local public body shall be submitted to the state purchasing agent through a database established by the state purchasing agent and made available on the state purchasing division's website. All required information must be submitted using this method.~~

~~C. Certification. On or before January 1, 2015, the state purchasing agent shall establish a certification program for chief procurement officers that includes initial certification and recertification every two years for all chief procurement officers. In order to be certified and recertified, a chief procurement officer shall obtain such education and training as deemed appropriate by the secretary of the general services department and pass a certification or recertification examination, as appropriate, approved by the secretary of the general services department. Separate certifications designed by the state purchasing agent and approved by the secretary of the general services department may be required before a chief procurement officer may conduct specialized procurement processes such as qualifications based proposals, design and build projects, construction manager at risk projects, and other such procurements as determined by the state purchasing agent and approved by the secretary of the general services department. The secretary of the general services department reserves the right to add other elements to the required certification process as are deemed necessary or useful.~~

~~D. Chief procurement officer duties, responsibilities and obligations. On and after July 1, 2015, only certified chief procurement officers may:~~

~~(1) make determinations, including determinations regarding exemptions, pursuant to the Procurement Code;~~

~~(2) issue purchase orders and authorize small purchases pursuant to the Procurement Code;~~
and

~~(3) approve procurement pursuant to the Procurement Code;~~

~~(4) provided that, persons using procurement cards may continue to issue purchase orders and authorize small purchases.]~~

~~A. Overview. This Section applies to chief procurement officers in all state agencies and local public bodies.~~

~~(1) Statutory Authority. Under Section 9-17-5 NMSA 1978 and the Procurement Code, Sections 13-1-1 et seq NMSA 1978, the general services secretary has authority to promulgate rules and regulations relating to this program.~~

~~(2) Scope. The chief procurement officer registration, certification and recertification training program is a state wide program administered by the state purchasing agent. Each state agency and local public body shall provide to the state purchasing agent the name of and all changes to the name of the state agency's or local public body's chief procurement officer and information identifying the state agency's or local public body's central purchasing office. The state purchasing agent shall maintain a list of the names of chief procurement officers reported to the state purchasing agent by state agencies and local public bodies. The state purchasing agent shall make the list of approved chief procurement officers available to the public through the web site of the purchasing division of the general services department and in any other appropriate form. It is a violation of statute if state agencies and local public bodies do not have a chief procurement officer listed on the state purchasing agent list before performing procurements. Section 13-1-98 NMSA 1978 shall not reduce the scope of duties, responsibilities or authority of the state purchasing agent, nor shall such exemptions exclude state agencies and local public bodies from the duties and responsibilities of providing the state purchasing agent the name of its certified chief procurement officer. All state agencies and local public bodies and their certified chief procurement officers are required to comply with all requirements under Sections 13-1-28 through 13-1-199 NMSA 1978 (amended 2013).~~

~~B. Definitions.~~

~~(1) "Approves" or "approved" means a chief procurement officer has successfully completed the certification or recertification training program administered by the state purchasing agent and attested to by the issuance of a certificate signed by the state purchasing agent.~~

(2) “Conduct” or “conducting” procurements means the act of preparing, advertising, processing, and awarding procurements of any kind, including, but not limited to, sole source, invitation to bid, request for proposals, and contracts under state price agreements.

(3) “Certification Program” means the initial certification process through passing an exam after completing course material and a test approved by the general services secretary.

(4) “Recertification Program” means training that will include affirmation of successfully completing course material approved by the general services secretary.

C. Mandatory identification of certified chief procurement officer. Each state agency and local public body shall annually, on or before January 1st of each year, and within 15 calendar days every time thereafter upon a vacancy or extended absence of a certified chief procurement officer for more than two weeks, provide to the state purchasing agent the name of the state agency or local public body certified chief procurement officer and, if applicable, information identifying the state agency or local public body central purchasing office. Every state agency or local public body shall have a certified chief procurement officer on the state purchasing agent list to perform procurements. No agency shall conduct procurements until a certified chief procurement officer is approved by the state purchasing agent. Upon a vacancy or absence, the state agency or local public body shall have 90 days to replace its certified chief procurement officer. In the event the initial 90 day period is to be exceeded, and upon good cause shown, to the satisfaction of the state purchasing agent, an additional 90 days may be granted to the state agency or local public body by the state purchasing agent to replace its certified chief procurement officer. Examples of good cause would include vacancies due to emergencies, death or resignation of a certified chief procurement officer. Until a certified chief procurement officer is reported to the state purchasing agent no procurements may be conducted and no duties, responsibilities, and obligations may be performed as detailed in Subsection F of 1.4.1.94 NMAC unless granted temporary authority by the state purchasing agent.

D. Registration of chief procurement officer with state purchasing agent. The certified chief procurement officer, that has been reported by the state agency or local public body to the state purchasing agent as provided in Subsection C of 1.4.1.94 NMAC above, shall register with the state purchasing agent through the state purchasing division’s website. The state agency or local public body shall provide all the required identification information, including:

(1) certified chief procurement officer name with title, phone number and email address;

(2) agency or entity name with full address and registration date.

At the time of registering for the certification or recertification program, the applicant shall execute a statement of personal responsibility affirming:

(a) he/she is a current employee of a state agency or local public body and not employed as an independent contractor;

(b) he/she has not been convicted of a felony unless pardoned by the governor; and

(c) any additional required information specified by the state purchasing agent.

E. Chief procurement officer certification. The state purchasing agent shall establish a certification and recertification program for all chief procurement officers including the initial certification, and recertification every two years, on or before the certification anniversary date for each certified chief procurement officer. In order to be certified or recertified, a chief procurement officer shall remain an employee of the state agency or local public body, must not be convicted of a felony or behavior unbecoming of a chief procurement officer with a record of performance that establishes good moral character and competency, and shall obtain such training as deemed appropriate by the secretary of the general services department and pass a certification or recertification program, as appropriate, approved by the secretary of the general services department. Subject to the provisions of subsection J, the state purchasing agent may revoke a certification if shown that the chief procurement officer has not maintained the standards for a chief procurement officer. The secretary of the general services department reserves the right to add separate certifications and recertifications of specialized acquisitions under the procurement code as are deemed necessary or useful by the secretary.

F. Certified chief procurement officer duties, responsibilities and obligations. On and after July 1, 2015, only certified chief procurement officers may do the following, except that persons using procurement cards may continue to issue purchase orders and authorize small purchases:

(1) make determinations, including determinations regarding exemptions, pursuant to the Procurement Code;

(2) issue purchase orders and authorize small purchases pursuant to the Procurement Code; and

(3) approve procurement pursuant to the Procurement Code.

G. Failure to identify and register a certified chief procurement officer. In the event that the state agency or local public body does not have a certified chief procurement officer identified and registered in conformance with Section 13-1-95.2 NMSA 1978, pursuant to Section 13-1-97 NMSA 1978, procurement acts by that state agency or local public body may be suspended at the discretion of the state purchasing agent.

H. Identification, registration and certification violations. Any procurement act performed by a state agency or local public body under the New Mexico procurement code that has not identified and registered its certified chief procurement officer in conformance with Section 13-1-95.2 NMSA 1978, may be deemed a procurement violation. For state agencies, such procurement violation(s) may also result in a violation of the department of finance and administration's Model Accounting Practices.

I. Delegation or sharing of certified chief procurement officer duties. The sharing of a certified chief procurement officer through mutual execution of a memorandum of agreement by the state agency (agencies) or local public body(bodies) is allowed. A state agency or local public body wanting to delegate or share a certified chief procurement officer with another state agency or local public body shall: provide to the state purchasing agent for such sharing arrangement, information identifying the state agency or local public body central purchasing office, the name of the state agency or local public body shared certified chief procurement officer and the intergovernmental agreement supporting the arrangement.

J. Revocation or suspension of certification.

(1) The state purchasing agent may suspend or revoke certified chief procurement officer certification in whole or in part, based on any action or conduct deemed improper of a certified chief procurement officer, including but not limited to severity or frequency of procurement violations, non-compliance with the Governmental Conduct Act (Sections 10-16-1 through 10-16-18 NMSA 1978), lack of verification that the chief procurement officer has successfully completed the certification or recertification program established by the state purchasing agent; lack of verification of current employment by the reporting state agency or local public body and not employed as an independent contractor; lack of verification that the person has not been convicted of a felony and behavior unbecoming of a chief procurement officer with a record of performance that establishes competency.

(2) Due process procedures shall be initiated by the state purchasing agent after reasonable notice to the certified chief procurement officer involved as follows in this section. The state purchasing agent or his designee shall cause written notice of the proposed revocation or suspension of certification (the Action) to be sent by certified mail, return receipt requested, to the certified chief procurement officer involved. The notice shall contain the following statements:

(a) the Action contemplated is for revocation or suspension of certified chief procurement officer certification;

(b) the reasons for the Action, which shall include a summary of the certified chief procurement officer's conduct or performance/nonperformance of his duties to which the Action relates;

(c) the Action is brought pursuant to the provisions contained in Section 13-1-95.2 NMSA 1978 and the regulations promulgated thereunder;

(d) sufficient facts exist, unless rebutted, to support the proposed revocation or suspension of certification and that the state purchasing agent shall proceed to suspend or revoke certified chief procurement officer certification in whole or in part unless the certified chief procurement officer requests, in writing, a hearing within 15 consecutive calendar days from the day the certified chief procurement officer receives the notice of the proposed Action;

(e) the address where the certified chief procurement officer's request for hearing shall be sent, and the name of the person to whom the request shall be sent; and

(f) that if the certified chief procurement officer fails to deliver a written request for a hearing to the person designated within the 15 days required in Subparagraph (d) of this Section, a final determination shall be made by the state purchasing agent;

(g) upon receipt of a timely request for hearing, the state purchasing agent will appoint a neutral hearing officer and any such hearing officer so appointed will conduct the hearing and recommend a final decision to the state purchasing agent. If no hearing officer can be appointed in timely fashion, the state purchasing agent shall then act as the hearing officer.

(3) If a hearing is requested, the hearing officer shall send written notice to the certified chief procurement officer of the time and the place of the hearing.

(4) Hearings, and any subsequent appeals, shall conform to the standards, requirements, and process set forth for protests under the procurement code, Sections 13-1-28 thru 13-1-199 NMSA 1978, and be as informal as may be reasonable and appropriate under the circumstances. However, in no event shall the hearing

officer be required to adhere to formal rules of evidence or procedure. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of fact agreed upon by the participants may be regarded and used as evidence at the hearing. The participants may stipulate the testimony that would be given by a witness as if the witness were present. The hearing officer may require evidence in addition to that offered by the participants. The state purchasing agent shall issue a written determination regarding revocation or suspension of certification following the hearing.

K. Reinstatement of certification.

(1) The state purchasing agent may reinstate the certified chief procurement officer certification:

(a) in whole or in part;

(b) temporarily or permanently; or

(c) may limit the scope of duties as the state purchasing agent

deems appropriate.

(2) The state purchasing agent may require successful completion of re-certification or proof of eligibility as a pre-condition for reinstatement. This may include successful completion of the certification program or recertification program.

(3) The state purchasing agent reserves the right to adopt additional remedies into the program as deemed appropriate.

L. Coordination by the state purchasing agent. The state purchasing agent may coordinate with the department of finance and administration regarding the reporting of decisions and actions under this section for state agencies, and with the local government division of the department of finance and administration for local public bodies.

M. Policies from the state purchasing agent. The state purchasing agent reserves the right to implement further policies to give full effect to the certified chief procurement officer statutes and this rule as required and necessary.

N. Limitations. Nothing in these rules shall be deemed to be a limit on the authority of the state purchasing agent to enact the purpose of these rules, nor a limit on other legal liability of certified chief procurement officer for their action or conduct.

[1.4.1.94 NMAC - N, 08/30/2013; A, 01/16/2018]