

NOTICE OF RULE HEARING

The State Purchasing Division of the General Services Department (“GSD/SPD” or “SPD”) hereby gives notice that SPD will conduct a public hearing to obtain public input on the following rulemaking actions:

Repeal and Replacement of Rule 1.4.1 NMAC and change in numbering of Rule 2.40.2 NMAC to 1.4.10 NMAC.

The hearing is scheduled to occur on Thursday, June 2, 2022, at 9:30 a.m. at the Joseph Montoya Building Bid Room, 1100 St. Francis Drive, Santa Fe, New Mexico 87505.

Authority: Section 14-11-7 NMSA 1978 as amended.

Purpose: The purpose of the Repeal and Replacement is to update 1.4.1 NMAC to comport with recent statutory changes as well as to update certain parts that have become meaningless with new technology (“telegraphing” etc.). The purpose of the change to 2.40.2 to 1.4.10 NMAC is in order to place that rule in the numbering context of other GSD rules since the Contracts Review Bureau was moved from the Department of Finance and Administration to GSD/SPD in recent statute.

Proposed Repeal and Replacement changes:

This is a Repeal and Replacement of Section 1.4.1 NMAC effective June 21, 2022, as follows:

1.4.1 PURPOSE: This Repeal and Replacement of 1.4.1 NMAC makes the following changes:

- 1) Various typographical and formulaic changes in keeping with the proscribed State Records and Archives format as well as cleanup of repetitive or misused language (“offeror” for “bidder” and vice versa, etc.);
- 2) The removal of certain definitions which are already contained in statute and the inclusion of new definitions for “Competitive process” and “Sealed” as well as a clarification for the definition of “Bidder”;
- 3) 1.4.1.11 was clarified to better comport with statute and case law;
- 4) Subsection D of 1.4.1.16 was clarified to encompass electronic bid filings and the fact that SPD has moved to more electronic based processes (several similar changes were also made to reflect this change);
- 5) Subsection B of 1.4.1.17 was clarified to encompass electronic notifications of bids (several similar changes were also made to reflect this change);
- 6) 1.4.1.17 was changed to reference statute in lieu of repeating it (several similar changes were also made in this regard);
- 7) 1.4.1.18 had clarifying changes made to the language without substantive change;
- 8) Subsection H of 1.4.1.24 was clarified to reflect current electronic processes;
- 9) 1.4.1.25 was changed to reflect statute instead of repeating it, especially as these preferences recently change and could foreseeably change in future;
- 10) 1.4.1.26 was changed for the same reasons;
- 11) Subsection 2 of Subsection C of 1.4.1.30 was rewritten to better reflect the actual process that takes place in evaluating a request for proposals;
- 12) Subsection B of 1.4.1.32 was clarified to better reflect actual SPD and agency processes;
- 13) 1.4.1.33 contains additional language to recommend that pre-proposal conferences not be made mandatory so as to eliminate prospective offerors but should be held if truly needed;
- 14) 1.4.1.41 was clarified to make “Best and Final Offers” more acceptable;
- 15) 1.4.1.43 contains some clarifying language as does 1.4.1.45;
- 16) 1.4.1.47 contains clarifying language since Contracts Review Bureau was moved from the Department of Finance and Administration to GSD/SPD;
- 17) 1.4.1.48 through 1.4.1.52 had language changes in order to make them reflective of statute rather than repeating statute especially since small purchase amounts are sometimes changed by the legislature;
- 18) 1.4.1.54 through 1.4.1.57 contain the most substantive changes in the replacement as they encompass the statutory requirements for local public bodies to post sole source procurements on the State Purchasing Agent’s website (see 13-1-126.1 NMSA 1978);

- 19) 1.4.1.59 was changed to reflect statute instead of repeating it in regard to emergency procurements;
- 20) 1.4.1.64 was changed to reflect the required retention periods as set forth by State Records and Archives instead of repeating it;
- 21) Subsection B of 1.4.1.87 was changed to better reflect the actual processes of SPD (as was Subsection C of 1.4.1.89);
- 22) 1.4.1.94 adds language to make it the responsibility of every entity to keep the SPD CPO website up-to-date with the most current information for that entity and also clarifies that only an “employee” can serve as an entity’s CPO as well as stating that such duties can be delegated under certain circumstances.

Summary of full text: The full documents’ texts can be found on the State Purchasing website. Interested individuals may provide comments at the public hearing and/or submit written or electronic comments to Paul Kippert, via email at paul.kippert@state.nm.us or mail to Paul Kippert, General Services Department, State Purchasing Division, PO Box 6850, Santa Fe, New Mexico 87502.

Written comments must be received no later than 5:00 pm on June 2, 2022 prior to the public hearing. However, the submission of written comments as soon as possible is encouraged. Persons may also submit written comments at the public hearing. All comments will be posted on the agency’s website within 3 days of receipt.

Copies of the proposed rule are available for download on the State Purchasing Division’s website at <https://www.generalservices.state.nm.us/statepurchasing/> and available at the State Purchasing Division located at General Services Department, State Purchasing Division, Joseph Montoya Building, Room 2016, 1100 St. Francis Drive, Santa Fe, New Mexico 87505. A copy of the proposed rule may also be requested by contacting Paul Kippert at (505) 827-0915.

Individuals with disabilities who require this information in an alternative format or need any form or auxiliary aid to attend or participate in the public hearing are asked to contact Paul Kippert at (505) 827-0915 to provide requested special accommodations.