

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 50 INSURANCE
PART 2 CONTRACTS FOR PURCHASE OF PROFESSIONAL SERVICES AND
INSURANCE

6.50.2.1 ISSUING AGENCY: New Mexico Public School Insurance Authority.

[6.50.2.1 NMAC - Rp, 6 NMAC 50.2.1, 09/01/2014]

[The address of the New Mexico Public School Insurance Authority is 410 Old Taos Highway, Santa Fe, New Mexico 87501.]

6.50.2.2 SCOPE: This part applies to all school districts, charter schools, other educational entities, eligible employees, eligible retired employees, eligible dependents, eligible participating entity governing body members, and persons or entities authorized to participate in the authority's employee benefits, risk-related and due process reimbursement coverages.

[6.50.2.2 NMAC - Rp, 6 NMAC 50.2.2, 09/01/2014]

6.50.2.3 STATUTORY AUTHORITY: Subsection D of Section 22-29-7 NMSA 1978, directs the authority to promulgate necessary rules, regulations and procedures for the implementation of the New Mexico Public School Insurance Authority Act, Section 22-29-1 et seq. NMSA 1978.

[6.50.2.3 NMAC - Rp, 6 NMAC 50.2.3, 09/01/2014]

6.50.2.4 DURATION: Permanent.

[6.50.2.4 NMAC - Rp, 6.50.2.4 NMAC, 09/01/2014]

6.50.2.5 EFFECTIVE DATE: September 1, 2014 unless a later date is cited at the end of a section.

[6.50.2.5 NMAC - Rp, 6 NMAC 50.2.5, 09/01/2014]

6.50.2.6 OBJECTIVE: The objective of this part is to establish requirements for procurement of professional services, consulting and insurance services for the authority. The objective is to set out policies to stimulate maximum competition for provision of these services. It is not the objective of this part to restate the Procurement Code, Section 13-1-1 et seq., NMSA 1978, but only to supplement it where necessary.

[6.50.2.6 NMAC - Rp, 6 NMAC 50.2.6, 09/01/2014]

6.50.2.7 DEFINITIONS: As used in this part: "professional services" means the services of third party administrators, insurance consultants, banks, underwriters, brokers, agents, architects, archaeologists, artists, entertainers, auditors, engineers, clergymen, land surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, photographers, pilots, researchers, teachers, writers, interpreters, and persons or businesses providing similar services.

[6.50.2.7 NMAC - Rp, 6 NMAC 50.2.7, 09/01/2014]

6.50.2.8 CONTRACT APPROVAL:

A. Every contract for professional services, consulting or insurance services shall be approved by the board only after its general legal counsel has reviewed it and has affirmed it is in compliance with appropriate provisions of the Procurement Code, Section 13-1-1 et seq., NMSA 1978 and these rules.

B. All amendments to contracts for professional services, consulting or insurance services shall also be subject to review and approval by the board's general legal counsel as provided in these rules.

[6.50.2.8 NMAC - Rp, 6 NMAC 50.2.8, 09/01/2014]

6.50.2.9 CONTRACT REQUIREMENTS:

A. All contracts for professional services, consulting or insurance services shall be in a form and contain such provisions as may be required by the board and its general legal counsel.

B. Each contract for professional services, consulting or insurance services shall comply with the Governmental Conduct Act, Section 10-16-1 et seq. NMSA 1978. In particular the provisions of Sections 10-16-7, 10-16-8 and 10-16-9 NMSA 1978 regarding contracts between state agencies and public officers or employees of the state, with the family of the public officer or employee or with a business in which the public officer or

employee or the family of the public officer or employee shall be strictly observed. When financial disclosure is required under the Financial Disclosure Act, Section 10-16A-1 et seq. NMSA 1978, the disclosure shall be filed with the secretary of state.

[6.50.2.9 NMAC - Rp, 6 NMAC 50.2.9, 09/01/2014]

6.50.2.10 PROCEDURES FOR ENTERING INTO CONTRACTS:

A. Contracts for professional services, consulting or insurance services shall be solicited, negotiated and awarded through a competitive sealed proposal process in accordance with the Procurement Code, Section 13-1-1 et seq., NMSA 1978. Sole source, emergency and small purchases shall also be solicited, negotiated and awarded in accordance with the Procurement Code, Section 13-1-1 et seq., NMSA 1978.

B. Proposals shall be evaluated based on the requirements set forth in the invitation for proposals, which requirements shall include criteria for evaluating proposals such as experience, both quantitative and qualitative, prior provision of similar services, client references, price and any other considerations the authority deems relevant. No criteria may be used in proposal evaluations that are not set forth in the invitation for proposals. The authority may provide that price is a factor, but that a contract need not be awarded to the vendor proposing the lowest price. The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the authority, taking into consideration the evaluation factors set forth in the request for proposals.

C. All prospective contractors shall submit to the board a signed completed original of a contract prepared by, reviewed and approved by the authority's general legal counsel. The contract form shall be submitted to and approved by the board prior to initiating any action with prospective contractors for contractual services and prior to beginning performance of any services pursuant to the contract.

D. There shall be no liability whatsoever by the authority, and there shall be no services rendered unless those services have commenced after approval of a contract for services by the board.

[6.50.2.10 NMAC-Rp, 6.50.2.10 NMAC, 09/01/2014]

6.50.2.11 MULTI-TERM CONTRACTS: Any multi-term contract for services (including the furnishing of insurance) shall only be entered into pursuant to the provisions of the Procurement Code, Section 13-1-150 NMSA 1978 as amended and supplemented.

[6.50.2.11 NMAC - Rp, 6 NMAC 50.2.11, 09/01/2014]

6.50.2.12 RIGHT TO PROTEST: Any offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the executive director of the authority. The protest shall be submitted in writing within 15 calendar days after knowledge of the facts or occurrence giving rise to the protest.

[6.50.2.12 NMAC - Rp, 6 NMAC 50.2.12, 09/01/2014]

6.50.2.13 FILING OF PROTEST:

A. Protests must be in writing and addressed to the executive director.

B. The protest shall:

(1) include the name and address of the protestant;

(2) include the solicitation number;

(3) provide a statement of the grounds for protest;

(4) include supporting exhibits, evidence or documents to substantiate any claim unless not available within the filing time, in which case the expected availability date shall be indicated;

(5) a statement of the facts or occurrences giving rise to the protest; and

(6) specify the ruling requested from the director.

C. No formal pleading is required to initiate a protest, but protests shall be concise, logically arranged, and direct.

[6.50.2.13 NMAC - Rp, 6 NMAC 50.2.13, 09/01/2014]

6.50.2.14 PROCUREMENTS AFTER PROTEST:

A. In the event of a timely protest, as defined in 6.50.2.12 and 6.50.2.13 NMAC, the executive director shall not proceed further with the procurement unless he makes a written determination that it is necessary to go forward with the award of the contract to protect substantial interests of the authority. Such written determination shall set forth the basis for the determination.

B. In no circumstance will a procurement be halted after a contract has been awarded merely because a protest has been filed.

C. The point in time in which a contract is awarded is that point at which a legally enforceable contract is created, unless the context clearly requires a different meaning.
[6.50.2.14 NMAC - Rp, 6 NMAC 50.2.14, 09/01/2014]

6.50.2.15 PROCEDURE:

A. Upon the filing of a timely protest, the burden is on the protestant to give notice of the protest to and to cause service to be made (as provided in the Rules of Civil Procedure) upon the contractor if award has been made or, if no award has been made, notice to and service upon all bidders and offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is upheld or denied.

B. The protestant and every business that receives notice pursuant to Subsection A of 6.50.2.15 NMAC will automatically be parties to any further proceedings before the executive director. In addition, any other person or business may move to intervene at any time during the course of the proceedings. Intervention will be granted upon a showing of a substantial interest in the outcome of the proceedings. Intervenors shall accept the status of the proceedings at the time of their intervention; in particular, they must abide by all prior rulings and accept all previously established time schedules.

C. The executive director and all employees and the general legal counsel of the authority are not parties to the proceedings.

[6.50.2.15 NMAC - Rp, 6 NMAC 50.2.15, 09/01/2014]

6.50.2.16 AUTHORITY TO RESOLVE PROTEST: The executive director may take any action reasonably necessary to resolve a protest regarding risk-related coverages. Such actions include, but are not limited to, the following:

- A. issue a final written determination summarily dismissing the protest;
- B. obtain information from the staff of the state purchasing agent or state central purchasing office;
- C. require the parties to produce information or witnesses under their control for examination;
- D. require parties to express their positions on any issue in the proceeding;
- E. require parties to submit legal briefs on any issues in the proceeding;
- F. establish procedural schedules;
- G. regulate the course of the proceedings and the conduct of any participants;
- H. receive, rule on, exclude or limit evidence;
- I. take official notice of any fact that is among the traditional matters of official or administrative notice;
- J. conduct hearings; and
- K. take any action reasonably necessary to compel discovery or control the conduct of parties or witnesses.

[6.50.2.16 NMAC - Rp, 6 NMAC 50.2.16, 09/01/2014]

6.50.2.17 HEARINGS:

A. Hearings are disfavored and will be held only when the executive director determines that substantial material factual issues are present that cannot be resolved satisfactorily through an examination of written documents in the record. Any party may request a hearing, but such requests shall be deemed denied unless specifically granted.

B. Hearings, when held, should be as informal as practicable under the circumstances, but the executive director has absolute discretion in establishing the degree of formality for any particular hearing. In no event is the executive director required to adhere to formal rules of evidence or procedure.

[6.50.2.17 NMAC - Rp, 6 NMAC 50.2.18, 09/01/2014]

6.50.2.18 RESOLUTION:

A. The executive director shall, within 30 days after receipt of all information or the date of any hearing, whichever is later, issue a written determination relating to the protest. The determination shall:

- (1) state the reasons for the action taken; and
- (2) inform the protestant of the right to judicial review of the determination pursuant to Section 13-1-183 N.M.S.A. 1978.

B. A copy of the written determination shall be sent immediately by certified mail, return receipt requested, to each of the parties.

[6.50.2.18 NMAC - Rp, 6 NMAC 50.2.19, 09/01/2014]

6.50.2.19 RELIEF:

A. If, prior to award of a contract, the executive director makes a determination that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be canceled.

B. If, after an award of a contract, the executive director makes a determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has not acted fraudulently or in bad faith:

(1) the contract may be ratified, affirmed and revised to comply with law, provided that a determination is made that doing so is in the best interests of the authority; or

(2) the contract may be terminated, and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.

C. If, after an award of a contract, the executive director makes a determination that a solicitation or award of a contract is in violation of law or that the business awarded the contract has acted fraudulently or in bad faith, the contract shall be canceled.

D. Except as provided in Paragraph (2) of Subsection B of 6.50.2.19 NMAC, the executive director shall not award money damages or attorneys' fees.

[6.50.2.19 NMAC - Rp, 6 NMAC 50.2.20, 09/01/2014]

6.50.2.20 MOTION FOR RECONSIDERATION:

A. A motion for reconsideration of a written determination issued pursuant to 6.50.2.18 NMAC, may be filed by any party involved in the procurement. The motion for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification of the determination is deemed warranted, specifying any errors of law made, or information not previously considered.

B. A motion for reconsideration shall be filed not later than 10 days after receipt of the written determination.

C. The executive director shall issue a written response within 10 business days to the motion for reconsideration. A copy of the written response shall be sent immediately by certified mail, return receipt requested, to each of the parties.

[6.50.2.20 NMAC - Rp, 6 NMAC 50.2.21, 09/01/2014]

6.50.2.21 DESIGNEE:

A. At any point during a protest proceeding the executive director or the board may appoint a designee, to act in place of the executive director. The designee will have all of the powers described in these rules regarding protest procedures except the power to issue a written determination under 6.50.2.18 NMAC. The designee only has authority to recommend a resolution to the executive director under that section.

B. The designee may be any person other than any person having made a proposal in response to the request for proposal.

C. A designee shall present a recommended written resolution to the executive director or the board and mail a copy to each of the parties. No party may appeal from the recommended resolution of the designee.

D. The executive director or the board shall approve, disapprove or modify the recommended resolution of the designee in writing. Such approval, disapproval or modification shall be the written determination required by 6.50.2.18 NMAC.

[6.50.2.21 NMAC - Rp, 6 NMAC 50.2.22, 09/01/2014]

6.50.2.22 FINAL DETERMINATION:

A. In those proceedings in which no motion for reconsideration is filed, the written determination issued pursuant to 6.50.2.18 NMAC shall be the final determination for purposes of the time limits for seeking judicial review under Section 13-1-183 NMSA 1978.

B. In those proceedings in which a motion for reconsideration is filed, the written response to the motion issued pursuant to Subsection C of 6.50.2.20 NMAC shall be the final determination for purposes of the time limits for seeking judicial review under Section 13-1-183 NMSA 1978.

[6.50.2.22 NMAC - Rp, 6 NMAC 50.2.23, 09/01/2014]

6.50.2.23 COPIES OF COMMUNICATIONS:

A. Each party to a protest proceeding shall certify that it has provided every other party with copies of all documents or correspondence addressed or delivered to the executive director.

B. No party shall submit any material, evidence, explanation, analysis, or advice, whether written or oral, to the executive director or the board *ex parte*, regarding any matter at issue in a protest.
[6.50.2.23 NMAC - Rp, 6 NMAC 50.2.24, 09/01/2014]

6.50.2.24 PROTESTS REGARDING HEALTH CARE CONTRACT PURCHASING: Protests concerning the authority's purchase of health care contracts shall be resolved by the procurement manager pursuant to the Health Care Purchasing Act, Section 13-7-1 et seq., NMSA 1978.
[6.50.2.24 NMAC - N, 09/01/2014]

6.50.2.25 CONTRACTS - AUDITS:

A. The authority has the primary responsibility for contract compliance monitoring. The board or its consultant if any, shall audit contracts on a random basis to determine:

- (1) if the tasks called for in the scope of services have been performed;
- (2) if the contract was completed in time and within budget; and
- (3) if the services were performed to the satisfaction of the authority.

B. For purposes of compliance with this provision, every contract shall require the contractor to maintain detailed time records which indicate the date, time and nature of services rendered.
[6.50.2.25 NMAC - Rp, 6 NMAC 50.2.25, 09/01/2014]

6.50.2.26 VOUCHER APPROVAL -- PROFESSIONAL SERVICES

A. No voucher for payment of professional services will be approved by the board or its third party administrators, other than a payroll voucher or travel voucher, unless the contract and any amendments to the contract have been approved where required by these rules. All vouchers must contain the contract identification number.

B. The board or its third party administrators shall not approve any voucher for the payment of professional services unless the voucher certifies that the services have been rendered.
[6.50.2.26 NMAC - Rp, 6 NMAC 50.2.26, 09/01/2014]

HISTORY of 6.50.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

NMPSIA Rule 89-100, Contracts for Purchase of Professional Services and Insurance, filed 3/27/89.

NMPSIA Rule 93-5, Contracts for Purchase of Professional Services and Insurance, filed 3/22/93.

History of Repealed Material:

6 NMAC 50.2, Contracts for Purchase of Professional Services and Insurance, filed 10/1/97 - Repealed effective 09/01/2014