

This rule was filed as 7 NMAC 1.5.

TITLE 7 HEALTH
CHAPTER 1 HEALTH GENERAL PROVISIONS
PART 5 PROCUREMENT OF PROFESSIONAL SERVICES

7.1.5.1 ISSUING AGENCY: NM Department of Health, Harold Runnels Building, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502-6110.
[3/5/85, 7/7/87, 1/1/97; Recompiled 10/31/01]

7.1.5.2 SCOPE: General Public
[3/5/85, 7/7/87, 1/1/97; Recompiled 10/31/01]

7.1.5.3 STATUTORY AUTHORITY: The statutory authority for adopting these regulations is found in Section 9-7-6.F., NMSA 1978 of the Department of Health Act and Sections 13-1-28, *et seq.* NMSA 1978 of the Procurement Code.
[3/5/85, 7/7/87, 1/1/97; Recompiled 10/31/01]

7.1.5.4 DURATION: Permanent.
[3/5/85, 7/7/87, 1/1/97; Recompiled 10/31/01]

7.1.5.5 EFFECTIVE DATE: January 1, 1997, unless a later date is cited at the end of a section or paragraph.
[1/1/97; Recompiled 10/31/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

7.1.5.6 OBJECTIVE: To implement the competitive sealed proposal procurement process mandated by the Procurement Code.
[3/5/85, 7/7/87, 1/1/97; Recompiled 10/31/01]

7.1.5.7 DEFINITIONS:

- A. "Central purchasing office" means an organizational unit within the department responsible for the control of procurement by competitive sealed proposals.
- B. "Contract" means any agreement for the procurement of professional services.
- C. "Department" means the New Mexico department of health.
- D. "Offeror" means a person or business which submits a proposal to provide professional services in response to a request for proposals.
- E. "Professional services" means the services of architects, archeologists, engineers, land surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers and persons or businesses providing similar services.
- F. "Procurement" means purchasing or otherwise acquiring professional services.
- G. "Secretary" means the secretary of the New Mexico department of health.

[8/12/85, 7/7/87, 1/1/97, 12/1/98; Recompiled 10/31/01]

7.1.5.8 APPLICABILITY:

- A. The secretary shall designate an organizational unit within the department as the central purchasing office. The central purchasing office shall assist the various units of the department in the procurement process but the award selection shall be made by the unit of the department requesting sealed proposals, unless otherwise directed by the secretary.
- B. The department shall procure professional services having a value exceeding twenty thousand dollars (\$20,000) by competitive sealed proposals.

C. The central purchasing office, in consultation with the procuring department unit, may determine that procurement should be effected by competitive sealed proposals when the use of competitive sealed bidding is either not practicable or advantageous to the department.

(1) Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder which agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the invitation for bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- (a) whether the contract needs to be other than a fixed-price type;
- (b) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- (c) whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- (d) whether award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the department. Quality factors include technical and performance capability and the content of the technical proposal; and

(e) whether the primary consideration in determining award may not be price.

(2) A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the department, even though practicable, to use competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

- (a) if prior procurements indicate that competitive sealed proposals may result in a more beneficial contract; and
- (b) whether the factors listed in Paragraph 8.3.1.2 through Paragraph 8.3.1.4 [now Subparagraphs (b) through (d) of Paragraph (1) of Subsection C of 7.1.5.8 NMAC] of this regulation are desirable as opposed to being necessary in conducting a procurement; if they are, then such factors may be used to support a determination that competitive sealed bidding is not advantageous.

[8/12/85, 7/7/87, 1/1/97; Recompiled 10/31/01]

7.1.5.9 PROCUREMENT PROCESS:

A. To initiate the process for procurement of professional services, a request for proposals shall be issued soliciting competitive sealed proposals which shall include the following:

- (1) the specifications for the services or professional services to be procured;
- (2) all contractual terms and conditions applicable to the procurement;
- (3) the location where proposals are to be received;
- (4) the date, time and place where proposals are to be received and reviewed;
- (5) a statement of the relative weights to be given to the factors in evaluating proposals;
- (6) a statement that offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submission of proposals and prior to award for the purpose of obtaining best and final offers;
- (7) a statement that the contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiations process.

(8) A statement which reads as follows: "The Procurement Code, Sections 13-1-23 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks."

B. Public notice of the request for proposals shall be given by publishing a notice not less than ten (10) calendar days prior to the date set for the receipt of the proposals. The notice shall be published at least once in a newspaper of general circulation in New Mexico. Other procedures may be adopted to notify prospective offerors as is commercially reasonable, including publication in trade journals. For all expenditures over twenty thousand dollars (\$20,000), copies of the notice shall also be sent to interested persons and businesses who have signified in writing an interest in submitting proposals for particular categories of services.

[8/12/85, 7/7/87, 1/1/97; Recompiled 10/31/01]

7.1.5.10 PRE-PROPOSAL CONFERENCES: Pre-proposal conferences may be held to explain the procurement process and requirements. Conferences shall be held long enough after the request for proposals has

been published to allow offerors to become familiar with it, but sufficiently before the deadline for submission of sealed proposals to allow consideration of the conference results in preparing their sealed proposals.
[8/12/85, 7/7/87, 1/1/97; Recompiled 10/31/01]

7.1.5.11 RECEIPT OF PROPOSALS:

A. Completed proposals shall be returned to the department as specified in the notice of the request for proposals. The organizational unit of the department receiving the completed proposal shall establish a log of all proposals received which shall include the date and time the proposal was received, the name of the offeror and a description of the proposal sufficient to identify the service(s) offered.

B. The log shall be maintained by the procuring unit of the department in its procurement file.
[8/12/85, 1/1/97, 1/1/97; Recompiled 10/31/01]

7.1.5.12 NEGOTIATIONS:

A. Negotiations may be conducted by the central purchasing office or the department unit for whom the services or professional services are to be provided with responsible offerors who submit proposals found to be reasonably likely to be selected for the award.

B. The above provision does not apply to architects, engineers, landscape architects and land surveyors.
[8/12/85, 1/1/97; Recompiled 10/31/01]

7.1.5.13 EVALUATION OF PROPOSALS:

A. The evaluation of submitted competitive sealed proposals shall be conducted by the department unit which caused the request for proposals to be issued. The evaluation shall be based on the evaluation factors and relative weights set forth in the request for proposals.

B. At least one written evaluation shall be prepared for every responsive proposal.
[8/12/85, 7/7/87, 1/1/97; Recompiled 10/31/01]

7.1.5.14 AWARD:

A. The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the department, taking into consideration the evaluation factors set forth in the request for proposals.

B. If, upon evaluation of all submitted proposals, a determination is made that none of the proposals submitted is most advantageous to the department, the central purchasing office, or procuring unit, may extend the deadline for submission of proposals or may reject any or all proposals, in whole or in part, when it is in the best interest of the department.

C. The central purchasing office or procuring unit of the department shall notify in writing each offeror of the outcome of the awards process.

D. All contracts for professional services with the department shall be reviewed:
(1) as to form and legal sufficiency by the office of general counsel of the department,
(2) for budget sufficiency by the administrative services division of the department; and
(3) by the department of finance and administration for form, legal sufficiency and budget requirements pursuant to Section 13-1-118 NMSA 1978.
[8/12/85, 7/7/87, 1/1/97; Recompiled 10/31/01]

7.1.5.15 SMALL PURCHASES OF PROFESSIONAL SERVICES:

A. The central purchasing office or procuring unit of the department may procure professional services having a value not exceeding twenty thousand dollars (\$20,000) excluding applicable state and local gross receipts taxes, except for the services of architects, landscape architects, engineers or land surveyors for state capital projects, as provided in this section.

B. Before contracting with any person or business to provide professional services, the central purchasing office is encouraged to examine the state purchasing agent's current list of potential offerors.

C. The central purchasing office or procuring unit of the department shall negotiate a contract for the required services at a fair and reasonable price to the department. The central purchasing office or department unit is encouraged, but not required, to contact at least three (3) persons or businesses for written or oral offers before

selecting a contractor. A record of those contacts shall be included in the procurement file maintained by the central purchasing office or procuring unit of the department.

D. If more than one person or business is contacted, the contents of the written or oral offer of one business shall not be disclosed to another person or business during the negotiation process.
[8/12/85, 1/1/97; Recompiled 10/31/01]

7.1.5.16 LATE PAYMENT CLAUSE: Department contracts shall include a clause imposing late payment charges against the department in the amount and under the conditions stated in Section 13-1-158 NMSA 1978.
[12/1/98; Recompiled 10/31/01]

HISTORY OF 7.1.5 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Centers:

HED-85-2 (ASD), Regulations Governing Procurement of Professional Services by Competitive Sealed Proposals, 3/5/85.

HED-87-6 (ASD), Regulations Governing Procurement of Professional Services by Competitive Sealed Proposals, 7/7/87.

History of Repealed Material: [RESERVED]