

This rule was filed as 7 NMAC 32.5.

TITLE 7 HEALTH
CHAPTER 32 ALCOHOL AND DRUG ABUSE
PART 5 PROCUREMENT OF PROFESSIONAL SERVICES FOR ALCOHOL AND SUBSTANCE
ABUSE SERVICES

7.32.5.1 ISSUING AGENCY: Department of Health, Behavioral Health Services/Division of Substance Abuse.
[10/13/78, 7/13/89 1/1/97; Recompiled 10/31/01]

7.32.5.2 SCOPE: Each entity (offeror/contractor) which submits a proposal(s) for and/or receives division funding for the purpose of establishing, expanding or continuing one or more of those substance abuse services authorized by the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act (Sections 43-3-8 et seq. NMSA 1978) and/or the Drug Abuse Act (Sections 26-2-1 et seq. NMSA 1978) except where the content of a regulation or any portion thereof is expressly applicable only to a specific group of offerors/contractors.
[7/13/89, 1/1/97; Recompiled 10/31/01]

7.32.5.3 STATUTORY AUTHORITY: Section 43-3-11.A NMSA 1978 of the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act (Sections 43-3-8 et seq. NMSA 1978) and/or Section 26-2-4D of the Drug Abuse Act (Sections 26-2-1 et seq. NMSA 1978).
[10/13/78, 7/13/89, 1/1/97; Recompiled 10/31/01]

7.32.5.4 DURATION: Permanent.
[1/1/97; Recompiled 10/31/01]

7.32.5.5 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[Compiler's note: The words *or paragraph*, above, are no longer applicable.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.]

7.32.5.6 OBJECTIVE: To establish procedures for procurement of professional services by competitive sealed proposals for substance abuse treatment and/or prevention services; and to establish minimum standards of eligibility for division funding.
[1/1/97; Recompiled 10/31/01]

7.32.5.7 DEFINITIONS:

- A.** [Reserved]
- B.** [Reserved]
- C.** [Reserved]
- D.** "Client" means an individual or family requesting or receiving services.
- E.** "Contractor" means an entity under contract with the department to provide substance abuse prevention, treatment, screening and/or assessment services.
- F.** "Department" means the New Mexico department of health.
- G.** "Director" means the director of the behavioral health services division/substance abuse of the New Mexico department of health.
- H.** "Division" means the behavioral health services/division of substance abuse of the New Mexico department of health.
- I.** "Division funding" means funding from state and/or federal sources that is available through the behavioral health services/division of substance abuse of the New Mexico department of health for the provision of substance abuse services.
- J.** "Governing body" means the group of individuals vested with an organization's policy-making authority for the management of that organization.

K. “Offeror” means an entity who submits a response to a request for proposals solicited by the division.

L. “Secretary” means the secretary of the New Mexico department of health.

M. “Standards” means those policies and procedures stipulated in 7 NMAC 32.4: “Comprehensive Substance Abuse Standards” [now 7.20.2 NMAC “Comprehensive Behavioral Health Standards”], or such regulations as may be amended or adopted by the department.

N. “Substance abuse” means the use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning.
[10/13/78, 7/13/89, 1/1/97; Recompiled 10/31/01]

7.32.5.8 MINIMUM STANDARDS:

A. These regulations comprise the minimum standards of eligibility for division funding. Meeting the minimum standards of eligibility does not guarantee that a contractor/offeror will receive division funding, nor that funding will be awarded in subsequent fiscal years.

B. The division may impose additional requirements beyond those contained in these regulations on any contractor/offeror through terms in a contract between the contractor and the division. Additional requirements may be imposed when a contractor/offeror has limited financial management or service delivery experience, or has an inadequate performance record, or in order to correct specific weakness identified by the division.
[7/13/89, 1/1/97; Recompiled 10/31/01]

7.32.5.9 REQUIREMENTS OF OTHER AGENCIES: A contractor/offeror who is required to be licensed by the licensing and certification bureau of the public health division of the department must obtain and retain such license.
[7/13/89, 1/1/97; Recompiled 10/31/01]

7.32.5.10 WAIVER:

A. At the request of a contractor/offeror and with the director’s authorization, the division may issue a written waiver of any of the requirements of these regulations which are not otherwise required by law.

B. The request for waiver must be in writing and must be signed by the authorized signatory of the contractor/offeror. The waiver may be granted only if accompanied by documentation which demonstrates that the waiver is in the best interest of the contractor’s/offeror’s clients.
[7/13/89, 1/1/97; Recompiled 10/31/01]

7.32.5.11 REVIEW AND EVALUATION:

A. A contractor’s performance shall be evaluated by review of:

(1) its compliance with all applicable federal and state rules and regulations, including 7 NMAC 32.4, “Comprehensive Substance Abuse Standards” [now 7.20.2 NMAC “Comprehensive Behavioral Health Standards”], or such regulations as may be amended or adopted by the department, and the terms and conditions of its individual contract;

(2) the degree of achievement of its own self-described objectives as negotiated between the contractor and the division as described in the contractor’s approved funding proposal;

(3) its financial and client status reports to the division and annual audit; and

(4) the fiscal solvency of the contractor.

B. During any site visit, division staff shall be given access to:

(1) any person employed at the site who is present at the site at the time of the visit, or any individual member of the contractors governing body whom the division staff wish to interview (interviews with members of the governing body shall be scheduled at the convenience of the members of the governing body);

(2) all physical facilities which are utilized for division funded activities; and

(3) clients to whom the contractor is providing substance abuse related services funded by the division and who agree to be interviewed (no client identifying information shall be removed from the program premises as a result of such interviews).

[7/13/89, 1/1/97; Recompiled 10/31/01]

7.32.5.12 REQUEST FOR PROPOSAL PROCESS:

A. A public notice of the request for proposals (RFP) shall be given by publishing a notice not less than ten (10) calendar days prior to the date set for receipt of the proposal. The notice shall be published at least once in a newspaper of a general circulation in New Mexico or the community where services are proposed. For all expenditures over twenty thousand dollars (\$20,000), copies of the notice shall also be sent to interested persons and business who have signified in writing an interest in submitting proposals for particular categories of services.

B. The division will initiate the process for procurement of services through a request for proposals. The RFP shall be issued soliciting competitive proposals, and shall include (but not be limited to) the following:

- (1) the type of service(s) to be procured (i.e., residential, outpatient, prevention, etc.) and the anticipated amount of funding available;
 - (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 relative weights to be given to the factors when 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 negotiation process; and
 - (8) a statement which reads as follows: "The Procurement Code, Sections 13-1-28 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."
- [10/14/78, 7/13/89, 1/1/97; Recomplied 10/31/01]

7.32.5.13 PROPOSAL PROCESS/PROCEDURE:

A. All offerors submitting proposals for division funding shall utilize the format and forms designated by the division and shall submit all information and copies consistent with instructions stipulated in the RFP packet.

B. The proposal by a non-profit corporation shall be signed by the signatory authorized by the organizations board of directors. The proposal of a municipality or other public body shall be signed by a signatory authorized by the municipality or the local public body.

C. The services for which an offeror seeks division funding must be consistent with the service needs for which the RFP is intended.

D. The division may, at its discretion, request proposals to meet service needs or establish research or demonstration projects. Offerors responding to such division requests for proposals shall submit their proposals in the form, time, and manner indicated in the division's request for such proposal.
[10/14/78, 7/13/89, 1/1/97; Recomplied 10/31/01]

7.32.5.14 RECEIPT OF PROPOSALS:

A. Completed proposals shall be submitted to the division or the organizational unit designated within the division as specified in the notice of the RFP.

B. The organizational unit of the division receiving the completed proposal(s) shall establish a log of all proposals received, which shall include the date and time each proposal was received, the name of the offeror, and a description of the proposal sufficient to identify the service(s) offered.
[7-13-89, 1-1-97; Recomplied 10/31/01]

7.32.5.15 PROPOSAL REVIEW/RECOMMENDATIONS:

A. Division staff shall, immediately upon receipt of proposals or soon after the deadline for submission, evaluate every responsive proposal submitted.

B. All responsive proposals will be evaluated and ranked in order, taking into consideration the evaluation factors and relative weights set forth in the request for proposals.

C. The list of proposals (in rank order) and the final recommendations from division staff will be provided to the director.

D. The director will recommend to the secretary of the department those proposals selected for award of contracts for proposed services.
[10/14/78, 7/13/89, 1/1/97; Recomplied 10/31/01]

7.32.5.16 CONTRACT NEGOTIATION/AWARD/NOTICE/ACCEPTANCE:

A. The secretary of the department will award a contract(s) to the offeror(s) which is (are) most advantageous to the department.

B. The division's award is contingent upon the offerors acceptance of any additional or special terms and conditions listed in the contract and any changes in the funding proposal. The offeror shall indicate acceptance of the award and any special or additional conditions it contains during the negotiation process and by signing and returning the contract to the division's offices. The contract shall become legally binding upon approval by the department of finance and administration of the written document.

C. The division will notify in writing each offeror of the outcome of the award process and will soon thereafter begin negotiations with the offeror(s) accepted.

D. All contracts for 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.

E. The division will negotiate a contract for the services at a fair and reasonable price which will conform to those previously accepted price ranges for specific units of service as determined by the division.

F. The dollar amount and the length of the term of each contract offered lies within the sole discretion of the department. All awards are subject to the availability of appropriated funds.

[10/14/78, 7/13/89, 1/1/97; Recompiled 10/31/01]

7.32.5.17 PROTEST PROCEDURES: All protests filed with the department will be governed by 7 NMAC 1.6 [now 7.1.6 NMAC] "Protest Procedure Under the Procurement Code", or such regulations as may be amended or adopted by the department.

[7-13-89, 1-1-97; Recompiled 10/31/01]

HISTORY OF 7.32.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: HED 78-10-1, Regulations For Funding Regional Treatment Centers And Detoxification Facilities, 10/13/78.

HED 89-5 (BHSD), Procurement Of Professional Services By Competitive Sealed Proposals For Alcohol And Drug Abuse Services, 7/14/89.

History of Repealed Material: [Reserved]