TITLE 1   GENERAL GOVERNMENT
CHAPTER 4   STATE PROCUREMENT
PART 9   ELECTRONIC SIGNATURES

1.4.9.1   ISSUING AGENCY: General Services Department (GSD).
[1.4.9.1 NMAC, 04/10/2018]

1.4.9.2   SCOPE: This rule applies to the use of electronic media, including electronic signatures for the execution of contracts and amendments or change orders, thereto, in the award process of procurements by state agencies and local public bodies subject to Sections 13-1-28 through 13-1-199 NMSA 1978 ("Procurement Code").
[1.4.9.2 NMAC - N, 04/10/2018]

1.4.9.3   STATUTORY AUTHORITY: Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978; Uniform Electronic Transactions Act, Section 14-16-1 et seq. NMSA 1978.
[1.4.9.3 NMAC – N, 04/10/2018]

1.4.9.4   DURATION: Permanent.
[1.4.9.4 NMAC - N, 04/10/2018]

1.4.9.5   EFFECTIVE DATE: April 10, 2018, unless a later date is cited at the end of a section.
[1.4.9.5 NMAC - N, 04/10/2018]

1.4.9.6   OBJECTIVE: This rule establishes uniform procedures and defines levels of signature authority for the state purchasing agent (and central purchasing offices when not excluded from purchasing through the state purchasing agent) and local public bodies to use electronic signatures for conducting procurements through the award process.
[1.4.9.6 NMAC - N, 04/10/2018]

1.4.9.7   DEFINITIONS: For purposes of this part, all terms defined in the Uniform Electronic Transactions Act, Section 14-16-1 et seq. NMSA 1978 have the meaning set forth in statute. Additionally, the following terms shall have the following meanings:
    A.   **Definitions beginning with the letter "A":**
        (1)   **"Agency"** means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities, or institutions.
        (2)   **"Agency head"** means the individual, or their proper designee, statutorily authorized to bind the state.
        (3)   **"Award process"** means when the final individual or their proper designee signs a document that statutorily binds the entity including the state or local public body to any contract, amendment or change order when performing procurements subject to the Procurement Code.
        (4)   **"Authenticate"** refer to Electronic Authentication of Documents Act, Subsection A of Section 14-15-3 NMSA 1978.
    B.   **Definitions beginning with the letter "B":** [**RESERVED**].
    C.   **Definitions beginning with the letter "C":**
        (1)   **"Contract"** means any agreement for the procurement of items of tangible personal property, services or construction.
        (2)   **"Contractor"** as defined in Section 13-1-43 NMSA 1978 means any business having a contract with a state agency.
        (3)   **"CRS number"** means the New Mexico tax identification number issued by the New Mexico taxation and revenue department that is used for reporting gross receipts, compensating, and withholding tax.
        (4)   **"Cyber Threat"** means a potential circumstance, entity or event capable of exploiting vulnerability and causing harm. Threats can come from natural causes, human actions, or environmental conditions.

A threat does not present a risk when there is no vulnerability. Vulnerability is a weakness that can be accidentally triggered or intentionally exploited.

        D.   **Definitions beginning with the letter "D":**

        (1)   **"Department"** means the general services department.

        (2)   **"Digital signature"** means any electronic signature that can be used to authenticate the identity of the sender of or signer of a document, and may also ensure that the content of the sent document is unaltered.

        (3)   **"Digitized signature"** means a graphical image of a handwritten signature.

        (4)   **"Document"** means an identifiable collection of words, letters or graphical knowledge representations, regardless of the mode of representation. For purposes of this rule, "document" may include, but is not limited to correspondence, agreements, contracts, amendments, change orders, invoices, reports, certifications, maps, drawings and images in both electronic and hard copy.

        E.   **Definitions beginning with the letter "E":**

        (1)   **"Electronic"** includes electric, digital, magnetic, optical, electronic or similar medium.

        (2)   **"Electronic authentication"** means the electronic signing of a document that establishes a verifiable link between the originator of a document and the document by means of optical, electrical, digital, magnetic, electromagnetic, wireless, telephonic, biological, a public key and private key system or other technology providing similar capabilities.

        (3)   **"Electronic record"** means a record created, generated, sent, communicated, received or stored by electronic means.

        (4)   **"Electronic signature"** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Refer to Uniform Electronic Transactions Act, Paragraph (8) of Section 14-16-2 NMSA 1978.

        F.   **Definitions beginning with the letter "F":** [**RESERVED**].

        G.   **Definitions beginning with the letter "G":** **"Governmental agency"** means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state.

        H.   **Definitions beginning with the letter "H":** [**RESERVED**].

        I.   **Definitions beginning with the letter "I":**

        (1)   **"Identification"** means the process of verifying and associating attributes with a particular person designated by an identifier for needed levels of signature authority.

        (2)   **"Identity"** means the unique name of an individual person, and any associated attributes; the set of the properties of a person that allows the person to be distinguished from other persons.

        (3)   **"Information"**   means data, text, images, sounds, codes, computer programs, software, databases or the like.

        (4)   **"Integrity"** means a state in which information has remained unaltered from the point it was produced by a source, during transmission, storage and eventual receipt by the destination.

        (5)   **"Intent to sign"** means the intent of a person that a sound, symbol or process is applied to a record in order to have a legally binding effect.

        J.   **Definitions beginning with the letter "J":** [**RESERVED**].

        K.   **Definitions beginning with the letter "K":** [**RESERVED**].

        L.   **Definitions beginning with the letter "L":** **"Level of assurance"** means the level of authentication assurance that describes the degree of certainty that a user has presented an identifier that refers to her identity.

        M.   **Definitions beginning with the letter "M":** **"Method"** means a particular way of doing something, a means, process or manner of procedure, especially a regular and systematic way of accomplishing something and an orderly arrangement of steps to accomplish an end.

        N.   **Definitions beginning with the letter "N":** [**RESERVED**].

        O.   **Definitions beginning with the letter "O":** **"Originator"** means the person who signs a document electronically.

        P.   **Definitions beginning with the letter "P":**

        (1)   **"Password"** means a secret word or string of characters that is used for authentication, to prove identity or to gain access to a record or resource. Passwords are typically character strings.

        (2)   **"PDF"** or "portable document format" refers to a file format used to present documents in a manner independent of application software, hardware, and operating systems. A PDF file encapsulates a

complete description of a fixed-layout flat document, including the text, fonts, graphics, and other information needed to display it.

    (3)   **"Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

    (4)   **"Personal identification number (PIN)** means a shared secret a person accessing a government organization's electronic application is requested to enter, such as a password or PIN. The system checks that password or PIN against data in a database to ensure its correctness and thereby "authenticates" the user.

    (5)   **"Private key"** means the code or alphanumeric sequence used to encode an electronic authentication and which is known only to its owner. The private key is the part of a key pair used to create an electronic authentication.

    (6)   **"Public key"** means the code or alphanumeric sequence used to decode an electronic authentication. The public key is the part of a key pair used to verify an electronic authentication.

    (7)   **"Public/private key system"** means the hardware, software, and firmware that are provided by a vendor for:

      (a)   the generation of public/private key pairs;

      (b)   the record abstraction by means of a secure hash code;

      (c)   the encoding of the signature block and the record abstraction or the entire record;

      (d)   the decoding of the signature block and the record abstraction or the entire record; and

      (e)   the verification of the integrity of the received record.

  Q.   **Definitions beginning with the letter "Q":** [**RESERVED**].

  R.   **Definitions beginning with the letter "R":**

    (1)   **"Reason for signing"** means the purpose statement of a person with regard to a document or electronic record that is affirmed by signing the document or record. The reason for signing should be distinguished from the intent to sign.

    (2)   **"Record"** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form.

    (3)   **"Record abstraction"** means a condensed representation of a document, which condensation is prepared by use of a secure hash code; it is also known as a message digest.

    (4)   **"Regulation"** as defined by Section 13-1-80 NMSA 1978 means any rule, order, or statement of policy, including amendments thereto and repeals thereof, issued by a state agency or a local public body to affects persons not members or employees of the issuer.

    (5)   **"Repudiate"** and **"non-repudiation"** refer to the acts of denying or proving the origin of a document from its sender, and to the acts of denying or proving the receipt of a document by its recipient. The burden of proof is with the person challenging the authenticity of the signature.

  S.   **Definitions beginning with the letter "S":**

    (1)   **"Secretary"** means the secretary of the general services department.

    (2)   **"Security"** shall mean either low, moderate or high risk transaction for any electronic form of signature, as defined in 1.12.7.15 NMAC. The level of security (low, moderate and high) is determined by the analysis of the likelihood of a successful challenge to the enforceability of a signature and the analysis of the cost or impact of an unenforceable signature.

    (3)   **"Security procedure"** means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures.

    (4)   **"Signed"** and **"signature"** means the manual or electronic signature of an individual or officer who is authorized, delegated, or required to legally bind a party.

    (5)   **"Signature block"** means the portion of a document, encoded by the private key, which contains the identity of the originator and the date and time of the records creation, submittal or approval.

    (6)   **"Signing requirements"** means the requirements that must be satisfied to create a valid and enforceable electronic signature.

    (7)   **"Sole source"** means tangible personal property, services or construction for which there is only one source and that source is unique and no other similar items of tangible personal property, services or construction can meet the intended purpose of the procurement.

(8) **"State agency"** means any department, agency, commission, council, board, advisory board, committee, or institution of the state of New Mexico, and does not include local public bodies.

(9) **"State purchasing agent"** means the director of the purchasing division of the general services department.

T. **Definitions beginning with the letter "T":**

(1) **"Tax and revenue"** shall mean the taxation and revenue department.

(2) **"Transaction"** means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial affairs or governmental affairs.

(3) **"Transferable record"** means an electronic record that would:

(a) be a note under Chapter 55, Article 3 NMSA 1978 or a document under Chapter 55, Article 7 NMSA 1978 if the electronic record were in writing; and

(b) the issuer of the electronic record expressly has agreed is a transferable record.

(4) **"Trusted entity"** means an independent, unbiased third party that contributes to, or provides, important security assurances that enhance the admissibility, enforceability and reliability of information in electronic form. In a public/private key system, a trusted entity registers a digitally signed data structure that binds an entity's name (or identity) with its public key.

[1.9.7.7 NMAC - N, 04/10/2018]

1.4.9.8 **ELECTRONIC SIGNATURE WORKFLOW PROCESS FOR CONTRACTS AWARDED AND CONTRACT AMENDMENTS:** The electronic signature workflow process for procurements, contracts awarded, change orders and contract amendments that are initiated and executed by any agency is as follows:

A. Signed by the contractor, with moderate security, and shall be considered final and binding as to the terms of contract.

B. Signed by any tax and revenue employee, with low security, and shall be considered to confirm the CRS number status of the contractor.

C. Signed by the agency (or agencies') head(s), if required by the state purchasing agent, with moderate security, and shall be considered final and binding as to the agency or agencies.

D. Signed by chief legal counsel for the agency, with high security, and shall be considered to have been reviewed and approved for execution.

E. Signed by the state purchasing agent, with high security, and shall be considered final and binding as to the terms of the contract or, for professional services, signed by the contracts review bureau of the department of finance, as designated by the department of finance cabinet secretary, with high security, and shall be considered final and binding as to the terms of the contract.

[1.4.9.8 NMAC - N, 04/10/2018]

1.4.9.9 **DELEGATION OF APPROVAL AUTHORITY:**

A. The state purchasing agent may delegate, in writing, to certain members of the department, the authority to approve contracts with the same level of security to sign all contracts and all amendments to those contracts except retroactive approval to contracts and contract amendments and sole source contracts and amendments to sole source contracts as provided herein.

B. Any agency head may delegate, in writing, to certain members of their department, the authority to approve contracts with the same level of security to sign all contracts and all amendments to those contracts except retroactive approval to contracts and contract amendments and sole source contracts and amendments to sole source contracts as provided herein.

C. Any chief legal counsel may delegate, in writing, to certain members of the general counsel office, the authority to approve contracts with the same level of security to sign for execution for all contracts and all amendments to those contracts except retroactive approval to contracts and contract amendments and sole source contracts and amendments to sole source contracts as provided herein.

[1.4.9.11 NMAC - N, 04/10/2018]

HISTORY of 1.4.9 NMAC: [RESERVED]