

**Opinion No. 67-107**

September 8, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Honorable Fred W. Foster State Representative Reserve Way Silver City, New Mexico

**QUESTION**

QUESTION

What does the Public Purchases Act require when making purchases up to \$ 1,000.00?

CONCLUSION

See analysis.

**OPINION**

{\*155} **ANALYSIS**

In your opinion request you state that this request has been asked because of various different interpretations which have been given to the new Public Purchases Act by auditors in this state. The question is broad enough that we believe a thorough discussion of the Public Purchases Act concerning purchases of less than \$ 1,000.00 is necessary.

First of all Section 6-5-26 E and H requires that before making a single purchase involving the expenditure of more than \$ 500.00 but less than \$ 1,000.00 the central purchasing office must:

- (1) attempt to secure at least three bona fide responsible written bids;
- (2) send notices of the proposed purchase to those responsible bidders who have signified in writing their interest in bidding on the items to be purchased; and
- (3) post notice of the proposed purchase on a bulletin board in the central purchasing office at least 24 hours in advance of such purchase.

For purchases of less than \$ 500.00 Section 6-5-26 D, N.M.S.A., 1953 Compilation requires that:

"A single purchase involving the expenditure of less than five hundred dollars (\$ 500) may be made after requesting three oral, telephoned or written bids. If less than three

bids are received, the purchase may be made without bids but at the best obtainable price."

Under this section a purchasing agent never has to make more than three telephone calls. If there are less than three bidders in the community only one telephone call need be made. However, the central purchasing agent must attempt to purchase the materials or services at the best obtainable price. Under the above section telephone calls are not always necessary as the provision allows for written bids. Thus if a dealer states that his quote, if he is called, will be  $\{ *156 \}$  his catalog price less a certain percentage for a stated period of time, this could easily eliminate a telephone call in each instance. It is the opinion of this office that either oral or written bids must be received on all purchases of less than \$ 500.00.

It is contemplated under the new purchasing act that fewer very small purchases will be made as Section 6-5-24, N.M.S.A., 1953 Compilation provides that:

"It shall be the responsibility of the central purchasing office:

(1) to reduce to the maximum extent possible, the number of purchase transactions by combining into bulk orders and contracts the requirements of users for common-use items or items repetitively purchased."

We note that to achieve this purpose of consolidating purchases the new act allows for three types of contracts to be utilized by central purchasing offices in addition to any other type of contract prescribed by regulation by the central purchasing office. The three types of contracts are set forth in Section 6-5-24 A as follows:

"(1) definite-quantity contracts, whereby the contractor agrees to furnish a specified quantity of materials or services at a specified time;

(2) **indefinite-quantity contracts**, whereby the central purchasing office or the user agrees to obtain from the contractor part or all of its requirements for specified materials or services in an estimated but indeterminate amount during a prescribed period of time at a definite unit-price or at a specified discount from list or posted prices; and

(3) **price agreements**, whereby the contractor agrees to supply required items, such as replacement parts for different makes of mechanical or automotive equipment, during a prescribed period of time at a definite unit price or at a specified discount from list or posted prices." (Emphasis Added).

The indefinite quantity contract provision will probably best facilitate purchasing offices with limited storage space. Under this provision a local public body anticipating that it will use 10 cases of No. 3 pencils in the next ten months might use the following specifications:

"Five to fifteen cases of # 3 pencils, delivery to be made as follows: one case the first day of each month beginning August 1st and ending May 1st of this year, unless otherwise ordered by the purchaser."

From the foregoing we must conclude that the new purchasing act requires bids on all purchases of any amount other than those specifically excepted. In addition the act contemplates fewer purchases by combining purchases into bulk purchases. There are, however, a number of situations when bids are not necessary.

Under Section 6-5-22 B (2), N.M.S.A., 1953 Compilation state agencies or local public bodies may purchase services and materials directly, without bids, where ordering through the central purchasing office would entail unnecessary and detrimental delay and loss to the user and the cost of the purchase will not exceed \$ 100.00. This is not an "emergency purchase" as defined in the Public Purchases Act. Under Section 6-5-22 B (2) if the unanticipated occurs and the state agency or local public body will suffer a loss by not purchasing immediately, the purchase may be made without following the bid requirements of Section 6-5-26, supra. A statement must accompany the requisition and invoice showing the necessity for the purchase.

{\*157} Actual "emergency" purchases may be made by the central purchasing office without bids under Section 6-5-27, N.M.S.A., 1953 Compilation. However, the emergency must be an unforeseen situation requiring immediate action to preserve the peace, health or safety of people or property in the jurisdiction of the state agency or local public body. A full report of these emergencies must be filed with the legislative audit commission.

The above bid requirements need not be followed when an agency or local public body is renting personal property which will involve an expenditure of \$ 2000 or less annually. See Section 6-5-31, N.M.S.A., 1953 Compilation. Also the bid laws need not be followed when bidding on Federal or State surplus property. See Sections 6-5-33 and 6-5-34 A, N.M.S.A., 1953 Compilation.

In addition bids need not be obtained when the state agency or local public body can purchase at prices equal to or less than prices stipulated in current federal supply contracts. Of course, even if the supplier will sell at "G.S.A. prices", the state agency or local public body may still find it in the public interest to bid on the materials to be purchased.

Local public bodies may also take advantage of Section 6-5-24 C when purchasing some materials. This section provides that central purchasing offices may cooperate with the state purchasing agent in obtaining contracts or price agreements which shall apply to purchase orders subsequently issued under the agreement. We understand that a number of these price agreements have already been entered into by the State Purchasing Agent and that local public bodies may now take advantage of this provision when purchasing some materials.

By: Gary O'Dowd

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