

Opinion No. 68-08

January 26, 1968

BY: OPINION OF BOSTON E WITT, Attorney General

TO: Albert T. Cochran State Purchasing Agent Santa Fe, New Mexico

QUESTIONS

1. Does the purchase of petroleum products or other items by credit card come under the Public Purchases act?
2. If the answer to question 1 is yes, is it necessary to secure competitive bids and make such purchases by contract or purchase order?
3. If the monthly purchases of gasoline by a state agency are less than \$ 100.00, is it satisfactory for the agency to continue to purchase without contract or bid process?

CONCLUSIONS

1. Yes.
2. Yes.
3. No.

OPINION

{*16} ANALYSIS

The State Purchasing Agent has entered into price agreements with two major and two minor oil companies to furnish gasoline to the state at a discount from pump prices. These four companies are unable to supply gasoline in all New Mexico cities and towns. We are asked when state agencies must purchase under the above price agreements.

Under the Public Purchases Act, it is the responsibility of the State Purchasing Agent to reduce to the maximum extent possible, the number of purchase transactions by combining into bulk orders and contracts the requirements of all state agencies for common-use items or items repetitively purchased. Section 6-5-24, N.M.S.A., 1953 Compilation. Gasoline is a biddable item under the Public Purchase Act when purchased for state vehicles. See Sections 6-5-26 and 6-5-18F, N.M.S.A., 1953 Compilation. As will be shown below, the fact that it may be delivered in small quantities and charged as delivered through the use of credit cards, seems to be wholly immaterial. The answer to question 1 is therefore yes.

Question 2 asks if it is necessary to secure competitive bids and make such purchases by contract or purchase order. Section 6-5-26F, N.M.S.A., 1953 Compilation requires that purchases exceeding \$ 1,000.00 be made only after notice that sealed bids will be received. Undoubtedly the State Purchasing Agent can anticipate purchases of more than \$ 1,000.00 in gasoline in a very short period of time and therefore he must seek competitive bids before awarding a contract for the purchase of gasoline.

In addition to any other type of contract that may be prescribed by regulation of the State Purchasing Agent, three types of contracts may be utilized by the State Purchasing Agent. The three types of contracts are set forth in Section 6-5-24A 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).

It is therefore concluded that it is necessary for the State Purchasing Agent to secure competitive bids and enter into one of the types of contracts set forth above, unless he has issued a regulation prescribing a different type of contract. From the facts given, the State Purchasing Agent has entered into price agreements pursuant to Section 6-5-24A(3), supra, and therefore has apparently complied with the requirements of the Public Purchases Act.

In question 3 we are asked if it is satisfactory for a state agency to purchase gasoline without contract or bid process, when the agency has gasoline purchases of less ^{*17} than \$ 100.00 a month. Under Section 6-5-22B(2), N.M.S.A., 1953 Compilation state agencies may purchase gasoline or other "materials", directly, without bids, on those occasions where ordering through the State Purchasing Agent would entail unnecessary and detrimental delay and loss to the state agency and the cost of the purchase will not exceed \$ 100.00. Obviously in most cases gasoline can be purchased by state agencies under the State Purchasing Agent price agreements without unnecessary and detrimental delay and loss. If the car is traveling from Santa Fe, before leaving, the user of the agency can fill the gasoline tank at a service station of an oil company that has entered into a price agreement with the State Purchasing Agent. If it is necessary to fill the gasoline tank of the state vehicle before returning, in most cases, it is anticipated that the user will find a contracting service station when

gasoline is needed. In some cases a little planning ahead may be necessary. However, if the user of the state vehicle cannot find a contracting service station, without going out of his way on his trip, he may purchase gasoline at any service station. Certainly when state employees are being paid per diem plus their salary it costs the State more for its employees to drive very far out of their way in search of a qualifying service station, than to pay an additional dollar or so for a tank of gasoline.

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