

Opinion No. 69-142

December 5, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Robert J Young, Assistant Attorney General

TO: Honorable E. H. Williams, Jr. District Attorney, Third Judicial District, Dona Ana County Courthouse, Room 207 Las Cruces, New Mexico 88001

QUESTIONS

1. If the GSA has established a current price for the purchase of personal property but no lease price, is the lease of such property subject to the Public Purchases Act?
2. May the trade-in value be considered in determining if the lease of the personal property is subject to the Public Purchases Act?

CONCLUSIONS

1. Yes.
2. No.

OPINION

{*227} ANALYSIS

The Public Purchases Act, Section 6-5-17 through 6-5-35, N.M.S.A., 1953 Compilation (1969 P.S.), distinguishes between purchases and leases. The central purchasing office is required to purchase all materials and services based on the lowest responsible bid when bids are required and at the best obtainable price when bids are not required, Section 6-5-26(A), supra. The purchase of materials or services at prices equal to or less than the prices stipulated in current federal supply contracts from a supplier or his authorized representative are exempt from the provisions {*228} of the Public Purchases Act, Section 6-5-34(F), supra. The lease of personal property for less than \$ 1000.00 is exempt from the Public Purchases Act, Section 6-5-31, supra. Therefore, the lease terms will be subject to the Public Purchases Act if there is a GSA contract purchase price and not a lease price and if the annual lease payment is more than \$ 1000.00. It will not be necessary to obtain bids if the GSA contract provides for lease terms or if the annual lease is less than \$ 1000.00.

If there is to be a trade-in or exchange of used articles as part payment on the purchase price, the sale price of the new article and the allowance as credit for the trade-in or exchange shall be stated separately. The difference between the sale price of the new article and the trade-in allowance shall be deemed the bid of the seller, Section 6-5-30,

supra. The expenditure by the central purchasing office is the total value or amount given for the purchase. In the situation of the trade-in, expenditure includes the bid of the seller and the value of the trade-in. The Public Purchases Act requires different bid procedures for single purchases depending on the estimated amount of the expenditure. Section 6-5-26, supra. The bid procedure to be followed is that for the total expenditure and not what may be the bid of the seller when the bid is the difference between the sale price and the trade-in allowance.