

Opinion No. 70-70

August 3, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mr. Easton H. Stoddard, Jr. Deputy State Purchasing Agent Lamy Building Santa Fe, New Mexico 87501

QUESTIONS

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Does Section 6-5-34(F) of the Public Purchases Act exempt the rental of personal property (Section 6-5-31) of \$ 1,000 or more annually from the provisions of the Public Purchases Act where rental is from a supplier at a price equal to its published price under contract with the federal government?

CONCLUSION

Yes.

OPINION

{*118} ANALYSIS

Section 6-5-31, N.M.S.A., 1953 Comp. (1969 P.S.) provides that:

Any lease agreement for personal property of one thousand dollars (\$ 1,000) or more annually shall be subject to the provisions of the Public Purchases Act [6-5-17 to 6-5-35] except the lease of personal property in those instances where the property is designated to match other property in use, by the user or where a unique or novel product application is required to be used in the public interest, which shall include but not be limited to the leasing of computers.

Another section of the Act modifies this provision somewhat. Section 6-5-34(F), N.M.S.A., 1953 Comp. (1969 P.S.) provides that the Public Purchases Act [6-5-17 to 6-5-35] shall not apply:

To purchases 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. . .

For the purposes of Section 6-5-34(F), a lease is a purchase of materials for a specified period of time. As defined in Section 6-5-18, N.M.S.A., 1953 Comp. (1969 P.S.) "materials" means "any item of tangible **personal** property furnished for the use and

benefit of users." (Emphasis supplied). "Purchasing" means the "procurement of **materials** and services for the use of state agencies and public bodies." (Emphasis supplied). According to these definitions rental of personal property from a supplier under contract with the federal government is a procurement of materials for the use of state agencies.

Attorney General Opinion No. 69-142, issued December 5, 1969, notes that lease terms will be subject to the Public Purchases Act if there is a G.S.A. contract purchase price but not a lease price and if the annual lease payment is more than \$ 1,000. It is not necessary to obtain bids if the G.S.A. contract provides for lease terms or if the annual lease is less than \$ 1,000.

It is our conclusion, therefore, that rental of personal property of \$ 1,000 or more annually is exempt from the bidding provisions of the Public Purchases Act where the rental is from a supplier, at a price equal to its published contract price with the federal government.

By: Gary O'Dowd

Deputy Attorney General