Purchasing Changes

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NEW LAW SUMMARY

Four (4) legislative bills affecting Procurement were passed by the New Mexico State Legislature (NMSL) this session and signed by Governor Susana Martinez
Senate Bill 443

Formal Bid Limits Increase to $60,000

– Changes Small Purchase Limit
– Changes Informal Bid Limit
– Effective 6/14/2013
Purchasing changes

Goods Below $10,000 or Services Below <$5,000
- Small Purchase

Goods $10,000.01 to $20,000
- One Quote or Other Documentation which describes price and product

Goods $20,000.01 to $60,000 – 3 Quotes
- The Buyer may use 1 quote in the following circumstances:
  1. Existing Contract (UNM, GSA, SPD, etc)
  2. Urgency – Buyer’s sole discretion
  3. Buyer’s Experience – Buyer’s determination that 1 quote represents fair value
Purchasing changes

Services or Goods and Services Combined 5,000.01 to $60,000

– Informal Bid
– Existing Contract
– 3 Quotes (1 /Quote for the following):
  1. Existing Contract
  2. Urgency
  3. Buyer’s Experience
Purchasing changes

Bid Limit Increases

Impact on UNM Requisitioners:
Fewer Purchases will be subject to the Formal Bidding Process or New Formal Sole Source Justification
Senate Bill 182

New “30-Day Challenge” Law for Sole Source Purchases

- 30 Day Waiting Period for all Sole Source Purchases, no exceptions
- Applies only to Sole Sources above Formal Bid Limits
- Requires Purchasing to Post a “Notice of Intent to Award” for a Sole Source Procurement 30 days prior to the purchase
- Your Sole Source Form will be posted in the UNM Sunshine Portal to be viewed and challenged by other vendors
- If the 30-day waiting period elapses without a challenge, your Sole Source Purchase can then be made
- Shifts Purchasing’s responsibility on a Sole Source from Good Faith Effort to Due Diligence
  - Purchasing will have to verify the information on your Sole Source form
- If your Sole Source is Challenged, Purchasing will follow PROTEST guidelines as posted at http://www.unm.edu/~purch/reg11.pdf and may be forced to use the Bid Process for your purchase
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Senate Bill 182

New “30-Day Challenge” Law for Sole Source Purchases

- “Per Terms of Grant” is No Longer sufficient for Sole Source Justification
  - Must now justify WHY it is required for Grant and why other substitutes are not acceptable
- Your Sole Source Justification Form must consider these factors:
  - What is unique about it
  - What other vendors sell it
  - Why it meets your needs and others do not
- In order to protect you from Sole Source Challenges, UNM Purchasing is currently updating our Sole Source Form to require a more thorough justification
- 30-Day Challenge Law is effective 6/14/13
  - Therefore, the last possible day to issue a Sole Source PO using FY13 funds is the day before the law is effective, Thursday, 6/13/13
Senate Bill 182

New “30-Day Challenge” Law for Sole Source Purchases

Impact on UNM Requisitioners:

- Substantial Increase in Sole Source Procurement Processing Time
- Your Sole Source Forms will be subjected to public scrutiny
  - 1-2 sentence Sole Source Justifications will no longer be adequate
- Requisitioners will need to plan well in advance of a Sole Source Purchase
  - No longer a “Fast Track” method of Purchase
- Might be faster to go out to Bid
  - Ex. Sole Source Challenge on Day 29
Senate Bill 182

Willful Violation of the Procurement Code

- Definition of “willful” can apply to both action and inaction
- Will frequently pertain to actions of Buyers in Purchasing but could apply to UNM Departments if they act without Purchasing
- This law will have NO impact to a Requisitioner provided:
  1) Purchase Order is in place BEFORE receiving goods/service
  2) Requisitioners act in good faith
- Effective 6/14/13
Senate Bill 182

Willful Violation of the Procurement Code

Other criminal laws that affect Departments continue to be in effect (Fraud, etc):
  – Illegal Kickbacks
  – Fraudulently supplying information for Sole Source, Bids, etc

Penalties:
  – 4th Degree Felony for Purchase > $50,000
  – Misdemeanor for Purchase < $50,000

Department Example of Willful Violation:
Department hires a consultant on their own (without Purchasing/PO). Invoiced prior to PO being issued.
  – If purchase is over $50,000 – 4th degree felony
  – If purchase is under $50,000 - Misdemeanor

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Other Procurement Law Changes

Senate Bill 182 - Emergency Procurement (rare)

- UNM Purchasing must now be directly involved
- Emergency Procurement Form must now be posted within 3 business days after award
- Forms will be posted in UNM Sunshine Portal
- UNM Purchasing is creating a new form
Other Procurement Law Changes

Senate Bill 340 – Design and Build Projects

– Eliminates $10 Million threshold
– Should increase use of D&B
Other Procurement Law Changes

SB 266 – Architectural/Construction

- Raises limits for Architectural & Engineering services from $200,000 to $2,000,000 over 4-year period
Other Procurement Law Changes

SB 443 – Certification/Exemptions

– Establishes certification and training requirements for Chief Procurement Officers