

GOVERNOR'S GUIDELINES FOR CONTRACT REVIEW AND RE-EVALUATION

In order to balance the fiscal interests of the State of New Mexico, a set of guidelines is necessary to ensure appropriate management of contracts between the State of New Mexico and vendors. The Governor strongly encourages all agencies to review and re-evaluate existing and prospective contracts to save taxpayer money while improving the service provided by each agency. Each executive agency is hereby instructed to follow the following guidelines until further notice:

1. **Existing Contracts** – Agencies must evaluate the essential need for existing procurement commitments. A clear distinction must be made between those contracts providing essential services and those providing non-essential services. The Governor's Office recognizes that some services are essential to the operation of the agency, however, not all contracts are essential and those contracts need to be identified and suspended or terminated.
 - a. **Non-Essential Contracts** – Contracts for non-essential services must be reviewed to determine whether they can be terminated without incurring legal liability. After review, agencies shall advise the Governor's office as to each contract and whether each non-essential contract should be continued or terminated. The listing shall include the contractor, the scope of services, contract amount and term.
 - b. **Essential Contracts** – Contracts for essential services must be reviewed to determine need for re-negotiation. After review, agencies shall advise the Governor's office as to each contract and whether each essential contract may or may not be negotiated. The listing shall include the contractor, the scope of services, contract amount and term, the timeline for renegotiation or a brief basis for no negotiation.
 - c. **Encumbered Funds** – Agencies must review all existing contracts to determine whether they are "obsolete" and whether the agencies actually contemplates "using" the contractor or merely wants to keep the funds encumbered in case they decide to use the contractor in the future. After review, agencies shall advise the Governor's office as to each instance in which a contract is maintained solely for encumbering funds. The listing shall include the contractor, the scope of services, contract amount and term and brief basis for keeping or eliminating the encumbrance.
 - 1) Agencies should disencumber funds and allow them to revert at the end of each fiscal year rather than procure non-essential equipment upgrades.
2. **Prospective Contracts** – Agencies must evaluate the essential need for new procurement.
 - a. Agencies must evaluate whether procurement can be delayed or the scope of work reduced or modified to reduce the expense.
 - b. When practicable, services must be performed in-house and upgrades avoided unless truly necessary.
 - c. When applicable, services and property in GSD master price agreements must be used.
 - 1) Master price agreements must be reviewed by GSD to ensure that it is getting the best current price (e.g. technology equipment prices may have decreased in the last 6 months due to wider availability/competition).
 - d. Consulting contracts should be strictly scrutinized to see whether the services are truly essential or whether existing staff can provide the input and review desired.

- e. Temporary employment services contracts must be strictly scrutinized. Such contracts may not be used to circumvent standard employment policies. Temporary contractual help may only be used if cost-benefit analysis indicates a need for such services and upon prior approval from the Governor's Office.
3. **Continual Guidelines for Contracts and Contracting** –
- a. Each agency must designate active and involved contract managers who are personally aware of every agency contract. Managers can be assigned professional service contracts, tangible personal property contracts, and other service contracts respectively. Managers must provide timely written reports of all prospective contracts or procurement to their Cabinet Secretaries or agency heads.
 - 1) Cabinet Secretaries or agency heads must personally review all proposed RFP's, Requests for Bids, and major contracts for professional services, services, and procurement of tangible personal property in excess of \$20,000.00.
 - b. Agencies must refrain from contracting for systems that replace existing operational systems, unless replacement is essential to the operation of the agency and/or the provision of cost-effective services. This paragraph is not intended to prevent long term savings from the replacement of obsolete or inefficient systems.
 - c. Contracts with former employees must be reviewed to ensure that they are essential, and the work required cannot in fact be performed in-house.
 - d. Agencies should consider limiting the term of their contracts to one year, with an option to renew, as opposed to agreeing to maximum terms allowed by the Procurement Code. This will allow annual performance and price review.
 - e. All contract extensions, within 90 days of contract expiration, must undergo the same scrutiny as new contracts prior to extension.
 - f. Minor procurement through purchase documents must be scrutinized to determine whether the property, equipment, or services are truly essential.
 - g. Contracts must be scrutinized to determine whether they have been divided to avoid competitive bidding or avoid proper administrative review.
 - h. Agencies must scrutinize their periodical, legal, and other subscriptions to ensure that they are not duplicated and are truly needed.
 - i. When considering sole source contracts, the agency must keep in mind the presumption in favor of competitive bidding, both from an economical view and one of fairness to the public. Competitive bidding may result in lower costs to the agency.
 - 1) Sole source property contracts must match the contractor's unique qualifications to the work needed. The contractor must truly be the only available source for the services or property required by the agency. The work contracted and paid for should be limited to the "sole source" scope of work. Otherwise, the agency should go out for bid or RFP for additional services required.
 - j. For emergency contracts, a true "emergency" must exist (i.e. a threat to the function of government, lives, health, or property). Emergencies do not exist simply from a need to procure the services "now", or from time pressure to implement a new contract.
 - k. Reports of all sole source and emergency contracts shall be provided to the Governor's Office immediately.