



March 2017

Risk Advisory Chief Procurement Officers

The Office of the State Auditor (“OSA”) has issued this Risk Advisory to alert state agencies and local public bodies (“Agencies”) of requirements pertaining to Chief Procurement Officers (“CPOs”). Agencies should ensure they have a designated CPO and procedures in place that grant appropriate authority to the CPO when making procurement decisions.

The Procurement Code (“Code”), Sections 13-1-28 through 13-1-199 NMSA 1978, is aimed at providing a fair and equitable public procurement process and maximizing the purchasing value of public funds. However, due to the complexities of the Code, its requirements, including the many exemptions and exceptions, are not easily applied. To promote compliance with the Code and safeguard public funds, the Legislature enacted a provision requiring Agencies to designate a person with knowledge of procurement processes to make purchasing decisions and determinations.

This law is relatively new and many Agencies appear to be non-compliant. This is especially true with respect to smaller political subdivisions of the state, such as mutual domestic water consumer associations, land grants and acequias. The General Services Department (“GSD”) is charged with maintaining a list of each agency’s CPO. However, of the approximately 1,500 Agencies throughout the State, only about 480 are registered with the GSD. As a result, many of those handling public dollars may not be receiving appropriate training and entities may not be getting the guidance they need to comply with procurement rules designed to protect taxpayers and ensure fair processes.

Additionally, even with respect to Agencies that have designated CPOs, the actual day-to-day internal operations of the entities often do not reflect the authority provided to CPOs. Only designated CPOs are authorized to approve purchases and make exemption determinations. CPOs must be empowered by management to make procurement decisions without the threat of executive override or reprisals for raising concerns regarding particular transactions.

Chief Procurement Officers in a Nutshell

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Pursuant to NMSA 1978, Section 13-1-95.2 (2013), state agencies and most local public bodies are required to designate a CPO who is certified by the General Services Department.

The CPO is responsible for the control of procurement of items of tangible personal property, services or construction.

As of July 1, 2015, only an Agency’s CPO may make procurement determinations (such as exemptions under the Code); issue purchase orders (POs); authorize small purchases; and approve procurements. Persons using procurement credit cards may continue to issue POs and small purchases.

All CPOs must complete a certification program and register with the GSD. A CPO certification must be renewed every two years.

A list of certified CPOs is available on the GSD website.

For the purpose of the Procurement Code, which entities are considered a “State Agency” or “Local Public Body”?

“**State agency**” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the purchasing division of the general services department and the state purchasing agent but does not include local public bodies.

“**Local public body**” means every political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code.

Risks

The failure to comply with CPO statutory requirements can result in a number of risks, including, but not limited to:

- *Waste of public resources.* One of the key objectives of the Code is to enable the government to obtain reasonable prices for goods and services through open and competitive practices. If Agencies are circumventing procurement rules, the risk of fraud, waste and abuse is increased.
- *Civil and criminal liability.* Knowingly and willfully violating the Code may subject employees to civil or criminal penalties. Agencies may face costly lawsuits if they take adverse actions against a CPO for refusing to take a particular action the CPO believes is inappropriate, or for highlighting areas of noncompliance.
- *Audit findings.* Noncompliance with procurement laws and rules may result in public audit findings.

Tips

Agencies should promptly assess their compliance with the CPO statute and evaluate their internal procedures. These steps should include, but are not limited to:

- Verifying that a CPO designation has been made. The designated individual should have the authority to sign procurement documents, however, if possible, the designee should not be a member of top management. This segregation of duties is important in establishing strong internal controls but may not always be possible with regard to smaller entities and during times of staffing vacancies.
- Checking that the GSD website lists the agency’s current CPO and certification.
- Implementing policies and procedures that clearly define roles and responsibilities of parties involved in the procurement and contracting processes and provide appropriate training, including explaining the role of the CPO.

- Ensuring that the CPO's authority to make procurement decisions is reflected in the agency's operating practices. Although a CPO is vested with the primary authority to make procurement decisions, the position is often a mid-level employee supervised by upper management. It is important that CPOs receive the support of management when valid concerns are raised and that recommendations about how to adhere to the Code are followed.

Resources

General Services Department, State Purchasing, Chief Procurement Officer Training

www.generalservices.state.nm.us/statepurchasing/chief-procurement-officer-training.aspx

Procurement Code Regulations, 1.4.1.94 NMAC

www.generalservices.state.nm.us/uploads/files/SPD/Presentations/1%204%201%20NMAC.pdf