

Significant Issues

According to Energy, Minerals and Natural Resources Department (EMNRD), the Forestry Division; has responsibility under the Forest Conservation Act (Section 68-2-8 NMSA 1978) to conduct fire suppression on 42.5 million acres of non-municipal, non-federal lands in New Mexico. Each year, the Forestry Division takes action on over 900 fires averaging 135,000 acres burned annually. The Forestry Division uses emergency procurement to respond to fires to protect public health, welfare, safety or property.

Staff from the General Services Department (GSD) notes fires and acts of terrorism would be covered in the current emergency condition language under “or similar events”, as would planning for any emergency when it occurs (e.g., how to combat a flood, fire, etc.). GSD knows of no reason to exempt from fair competition any planning and preparation for events that have not yet happened and are therefore not time-sensitive.

GSD staff explains exempting planning and preparation activities that are not time sensitive would erode the basic foundation of the Procurement Code – to ensure all vendors have equal opportunity to compete for government business. It is possible that vendors who enter into price agreements and other competitive processes now would be more reluctant to participate in the future if exemptions are allowed that are not truly emergencies.

Additionally, GSD staff notes an understanding that approximately \$15 million in federal funds may be available to New Mexico to enhance planning and preparation for emergency situations. Many purchases to be made in association with these activities can already be purchased under existing price agreements (e.g., furniture, computers). The State Purchasing Division (GSD) provides support to agencies with special needs, and would assist in emergency response planning and preparedness activities.

FISCAL IMPLICATIONS

GSD staff notes the fiscal implication is unknown. Purchases made on an emergency basis cost more than when competitive process like price agreements and bids are used.

OTHER SUBSTANTIVE ISSUES

GSD staff notes emergency situations would already be covered by the emergency procurements language in Section 13-1-127 NMSA 1978, and purchases that are not time-sensitive would be subject to competition.

WJC/prr