

JOINT POWERS AGREEMENT
FOR SHARED JURISDICTION UNDER THE PROCUREMENT CODE
BETWEEN
THE NEW MEXICO STATE ETHICS COMMISSION
AND
THE STATE PURCHASING DIVISION OF THE NEW MEXICO GENERAL
SERVICES DEPARTMENT

THIS JOINT POWERS AGREEMENT (“JPA”) is entered into by and between the New Mexico State Ethics Commission (“SEC”) and the State Purchasing Division (“SPD”) of the New Mexico General Services Division (“GSD”), collectively the “Parties.”

WHEREAS, the Parties are authorized by the Joint Powers Act, NMSA 1978, Sections 11-1-1 to 7 (2009) to enter into this Agreement;

WHEREAS, Article 5, Section 17 of the New Mexico Constitution creates the SEC;

WHEREAS, the Legislature enacted the State Ethics Commission Act, NMSA 1978, Sections 10-16G-1 through 16 (2019), and enabled the SEC;

WHEREAS, the State Ethics Commission Act, NMSA 1978, Section 10-16G-9(A)(7), confers on the SEC the jurisdiction to enforce the applicable civil compliance provisions of the Procurement Code, NMSA 1978, Sections 13-1-28 to -199, for public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists’ employers;

WHEREAS, the Procurement Code, NMSA 1978, Section 13-1-196.1, confers on the SEC jurisdiction to investigate complaints against a contractor who has a contract with a state agency or a person who has submitted a competitive sealed proposal or competitive sealed bid for a contract with a state agency and to impose the civil penalties authorized in NMSA 1978, Sections 13-1-196 through 13-1-198;

WHEREAS, the State Ethics Commission Act, NMSA 1978, Section 10-16G-9(E) provides that the SEC shall share jurisdiction with other public agencies having authority to act on a complaint or any aspect of a complaint, and that such shared jurisdiction shall be formalized through an agreement entered into by all participating agencies involved with the complaint and the director;

WHEREAS, the State Ethics Commission Act, NMSA 1978, Section 10-16G-9(B), provides that all complaints filed with a public agency regarding the statutes over which the SEC has jurisdiction, including the Procurement Code, shall be forwarded to the SEC;

WHEREAS, the Procurement Code, NMSA 1978, Section 13-1-95, creates the SPD and confers on the State Purchasing Agent the authority to administer the Procurement Code for those state agencies not excluded from the requirement of procurement through the State Purchasing Agent;

WHEREAS, the Procurement Code, NMSA 1978, Section 13-1-174, confers on the State Purchasing Agent, or his or her designee, the authority to take any action reasonably necessary to resolve a protest of an aggrieved bidder or offeror, to be exercised in accordance with the regulations promulgated by the GSD Secretary;

WHEREAS, the Procurement Code, NMSA 1978, Section 13-1-175, confers on the State Purchasing Agent, or his or her designee, the authority to issue determinations relating to protests;

WHEREAS, the Procurement Code, NMSA 1978, Section 13-1-177(A), confers on the State Purchasing Agent, after consultation with the using agency, the authority to suspend a person from consideration from award of contracts if the State Purchasing Agent, after reasonable investigation, finds that a person has engaged in conduct that constitutes cause of debarment pursuant to NMSA 1978, Section 13-1-178;

WHEREAS, the Procurement Code, NMSA 1978, Section 13-1-177(B), confers on the State Purchasing Agent the authority, after reasonable notice to the person involved, to recommend to the governing authority of a state agency or a local public body the debarment of a person for cause from consideration for award of contracts, other than contracts for professional services;

WHEREAS, the Parties seek to jointly cooperate in the enforcement and administration of the Procurement Code and the State Ethics Commission Act;

WHEREAS, the Parties agree that it is in their best interests to delineate the shared jurisdiction conferred on them by the Procurement Code and the State Ethics Commission Act through this Joint Powers Agreement; and

WHEREAS, the Parties enter into this JPA to facilitate the Parties' concurrent jurisdiction over the Procurement Code, as contemplated by NMSA 1978, Section 10-16G-9(C)-(E).

NOW, THEREFORE, the Parties agree as follows:

I. DEFINITIONS: The following terms are defined as follows:

A. Complainant: any person or entity who files with either SPD or SEC a written complaint, claim, or protest that alleges a violation of the Procurement Code;

B. Complaint: a complaint as defined by NMSA 1978, 10-16G-2(D);

C. Protest: any claim or complaint filed by any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract that may be made pursuant to NMSA 1978, Section 13-1-172; and

D. Respondent: a person against whom a complaint, claim or protest alleging a violation of the Procurement Code has been filed, either with SPD or SEC.

II. PARTIES' SHARED JURISDICTION. The Parties' shared jurisdiction to investigate, adjudicate, and enforce the provisions of the Procurement Code will be administered according to the following provisions:

A. Complaints received by the SEC.

1. If the SEC receives any complaint alleging a violation of the Procurement Code that the SEC's Executive Director, or his or her designee, concludes is (i) a protest made pursuant to NMSA 1978, Section 13-1-172; or (ii) a petition for debarment or suspension made pursuant to NMSA 1978, Sections 13-1-177 through 13-1-180, the SEC will refer that complaint to SPD and notify both the complainant and the respondent of the referral. Once the SPD makes a determination on the referred complaint, the SPD will inform the SEC regarding the determination, and the SEC will take any necessary or appropriate action regarding disposition of the matter. If the SEC undertakes any subsequent investigation that reveals any facts that might affect the SPD's original determination on the protest or petition for debarment or suspension, the SEC shall provide those facts to the SPD.

2. If the SEC receives any complaint alleging a violation of the Procurement Code that the SEC's Executive Director, or their designee, concludes is not (i) a protest made pursuant to NMSA 1978, Section 13-1-172; or (ii) a petition for debarment or suspension made pursuant to NMSA 1978, Sections 13-1-177 through 13-1-180, then the SEC will adjudicate the complaint pursuant to the State Ethics Commission Act and the SEC's applicable administrative rules. The SEC will notice the SPD on any hearing officer decision or Commission decision on the complaint.

B. Alleged or potential violations of the Procurement Code received by SPD.

1. If the SPD receives any alleged violation of the Procurement Code that the SPD interprets as (i) a protest made pursuant to NMSA 1978, Section 13-1-172; or (ii) a petition for debarment or suspension made pursuant to NMSA 1978, Sections 13-1-177 through 13-1-180, the SPD will make a determination on that protest or petition and will not forward that protest or petition to the SEC; *provided that*, if the SPD concludes, in its discretion, that the alleged violation of the Procurement Code should be forwarded to the SEC for additional investigation, then, after the SPD makes a determination on the protest or petition for debarment or suspension, the SPD will forward to the SEC the protest or petition, corresponding SPD determination, and any other related records.

2. If the SPD becomes aware, through any means, of any potential violation of NMSA 1978, Sections 13-1-190, 13-1-191.1(F)(2), 13-1-193, and 13-1-195, then the SPD will forward the records giving rise to that potential violation to the SEC.

3. The SEC will notice the SPD on any hearing officer decision or Commission decision relating to any alleged or potential violation of the Procurement Code that the SPD forwards to the SEC.

III. TRAININGS. The SEC may offer annual ethics training to public officials, public employees, government contractors, lobbyists and other interested persons under the State Ethics Commission Act, Section 10-16G-5(C)(5). The SPD conducts trainings on procurement for public officials, public employees, government contractors, and other interested persons. The Parties will coordinate and cooperate when appropriate on ethics training and/or education.

IV. TERM AND TERMINATION. This JPA is effective as of the date of the DFA Cabinet Secretary's signature. It shall continue in full force in perpetuity, unless amended or terminated by either Party, which termination shall be accomplished by a Party giving the other Party a minimum of thirty (30) days' advance written notice of the termination.

V. PROPERTY DISPOSITION. There will not be any property acquired by either Party under the terms of this JPA. If the Parties acquire any property or funds related to this JPA then "after the completion of the agreement's purpose any surplus money on hand shall be returned [to the respective Party] in proportion to the contributions made." NMSA 1978, § 11-1-4(F).

VI. RECORDS. Records acquired during the term of this JPA will be public records and subject to public disclosure under the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to 12, and the State Ethics Commission Act, NMSA 1978, Sections 10-16G-1 to -16.

VII. RESPONSIBILITY. The SEC and the GSD will be responsible for their own actions under all applicable law and regulations.

VIII. FINANCIAL CONTRIBUTION. There shall not be a financial contribution by or to either Party under the terms of this JPA unless otherwise agreed to in writing.

IX. AMENDMENTS. The JPA shall not be changed, altered or amended except by an instrument in writing executed by the Parties and with agreement of both Parties and approved by the Department of Finance and Administration.

X. APPROPRIATIONS. The Legislature has not appropriated funds to either Party to manage the JPA.

XI. RESERVATION OF POWER. Nothing in this agreement may be construed to limit the SEC's power to initiate a civil action in district court under NMSA 1978, Section 10-16G-9(F) or any investigation related to the exercise of that power.

XII. THIRD PARTY BENEFICIARIES. The benefits of the JPA inure only to the Parties. No third party beneficiaries are anticipated or specified under the JPA.

XIII. GOVERNING LAW. The JPA shall be governed by the laws of the State of New Mexico.

XIV. WRITTEN NOTICE. All notices, demands, requests, consents, and approvals required or permitted to be given pursuant to this JPA will be in writing signed by the notifying party or its agent(s) and will be deemed effective upon delivery or receipt. Parties to be given written notice as necessary are as follows:

State Ethics Commission:
Jeremy D. Farris, Executive Director

800 Bradbury Dr. SE, Suite 217
Albuquerque, NM 87106

State Purchasing Division:
Mark Hayden, State Purchasing Agent
Joseph Montoya Building
Room 2016
1100 St. Francis Dr.
Santa Fe, NM 87502

XV. AGREEMENT BINDING ON SUCCESSORS. This JPA shall be binding upon the successors and assigns of the parties hereto.

XVI. SEVERABILITY. If any provision of this JPA is held invalid, the remainder of this JPA shall not be affected thereby and such remainder would constitute the Agreement, unless the provision held invalid was such as to make the fulfillment of the purpose of this JPA impossible or impracticable.

XVII. TORT CLAIMS ACT. By entering into this JPA, the parties and their “public employees” as defined in the New Mexico Tort Claims Act, NMSA 1978, Section 41-1-4 et seq. do not waive sovereign immunity or any defense or limitation of liability pursuant to law. No provision in this JPA modifies or waives any provision of the New Mexico Tort Claims Act.

XVIII. EXECUTION. This JPA shall be executed in three (3) originals.


IN WITNESS WHEREOF, the parties have executed this JPA which becomes effective as of the date of approval by the Department of Finance and Administration.

By: 
Mark Hayden
State Purchasing Agent

Date: 11/20/2019

By: 
Kenneth Ortiz
General Services Department, Cabinet Secretary

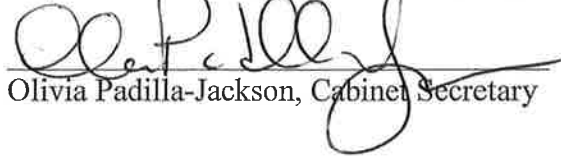
Date: 11/21/19

By: 
Jeremy Farris
State Ethics Commission, Executive Director

Date: 11/23/19

APPROVED:

Department of Finance and Administration

A handwritten signature in black ink, appearing to read 'Olivia Padilla-Jackson', written over a horizontal line.

Olivia Padilla-Jackson, Cabinet Secretary

Date: 12/11/19