



STATE ETHICS  
COMMISSION MEETING

February 2, 2024

**PUBLIC MATERIALS**

**PUBLIC MATERIALS**  
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**STATE ETHICS COMMISSION**

Hon. William F. Lang, Chair  
Jeffrey L. Baker, Member  
Stuart M. Bluestone, Member  
Hon. Celia Castillo, Member  
Hon. Dr. Terry McMillan, Member  
Ronald Solimon, Member  
Dr. Judy Villanueva, Member

February 2, 2024, 9:00 a.m. to 1:00 p.m. (Mountain Time)

Meeting Link: [HERE](#)  
Meeting ID: 880 4329 3993  
Passcode: Ethics123  
**Commission Meeting**

Chair Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of December 15, 2023 Commission Meeting

**Commission Meeting Items**

**Action Required**

- |  |     |
|--|-----|
| 4. Legislative Update<br>( <i>Farris</i> )   | No  |
| 5. Advisory Opinion 2024-01<br>( <i>Farris</i> )                                   | Yes |
| 6. State Ethics Commission Media Policy<br>( <i>Baker, Bluestone, Villanueva</i> ) | Yes |
| 7. Commissioner Bluestone op-ed on Procurement Code<br>( <i>Bluestone</i> )        | Yes |
| 8. Public Comment (pre-closed session)   | No  |

**Upon applicable motion, Commission goes into executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings) and 10-15-1(H)(7) (attorney client privilege pertaining to litigation).**

9. Discussion regarding current and potential litigation:  
(*Boyd, Farris*)
  - a. Authorization of a civil action to enforce Section 10-16-3.1 of the Governmental Conduct Act
  
10. Administrative Matters under Revised Uniform Law on Notarial Acts:  
(*Branch*)
  - a. 2023-NP-02 *In re commission of Nava* (Default Order)
  
11. Discussion regarding administrative matters subject to settlement approval:  
(*Boyd*)
  - a. Administrative Complaint No. 2023-025
  - b. Administrative Complaint No. 2023-036
  
12. Discussion regarding administrative matters under State Ethics Commission Act:  
(*Manierre, Farris*)
  - a. Administrative Complaint No. 2023-027
  - b. Administrative Complaint No. 2023-034
  - c. Administrative Complaint No. 2023-047
  - d. Administrative Complaint No. 2023-048
  - e. Administrative Complaint No. 2023-049
  - f. Administrative Complaint No. 2023-050
  - g. Administrative Complaint No. 2023-051
  - h. Administrative Complaint No. 2023-052
  - i. Administrative Complaint No. 2023-053
  - j. Administrative Complaint No. 2023-055
  - k. Administrative Complaint No. 2023-056
  - l. Administrative Complaint No. 2023-057
  - m. Administrative Complaint No. 2023-058
  - n. Administrative Complaint No. 2023-059
  - o. Administrative Complaint No. 2023-060
  - p. Administrative Complaint No. 2023-061
  - q. Administrative Complaint No. 2024-001
  - r. Administrative Complaint No. 2024-002

**Upon applicable motion, Commission returns from executive session**

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13. Authorization of Civil Action: Yes  
(*Farris*)

- a. Authorization of a civil action to enforce Section 10-16-3.1 of the Governmental Conduct Act
14. Administrative matters under the Revised Uniform Law on Notarial Acts: Yes  
*(Branch)*
- a. 2023-NP-02 *In re commission of Nava* (Default Order)
15. Settlements in Administrative Matters under the State Ethics Commission Act: Yes  
*(Boyd)*
- a. Administrative Complaint No. 2023-025
  - b. Administrative Complaint No. 2023-036
16. Administrative Matters under State Ethics Commission Act: Yes  
*(Farris)*
- Extensions for further investigation of administrative complaints:
- a. Administrative Complaint No. 2023-027
- Dismissals of administrative complaints:
- a. Administrative Complaint No. 2023-034
  - b. Administrative Complaint No. 2023-047
  - c. Administrative Complaint No. 2023-048
  - d. Administrative Complaint No. 2023-049
  - e. Administrative Complaint No. 2023-050
  - f. Administrative Complaint No. 2023-051
  - g. Administrative Complaint No. 2023-052
  - h. Administrative Complaint No. 2023-053
  - i. Administrative Complaint No. 2023-055
  - j. Administrative Complaint No. 2023-056
  - k. Administrative Complaint No. 2023-057
  - l. Administrative Complaint No. 2023-058
  - m. Administrative Complaint No. 2023-059
  - n. Administrative Complaint No. 2023-060
  - o. Administrative Complaint No. 2023-061
  - p. Administrative Complaint No. 2024-001
  - q. Administrative Complaint No. 2024-002
17. Discussion of next meeting: No  
*(Lang)*

18. Public Comment

No

19. Adjournment

*If you are an individual with a disability who needs an accommodation to attend or participate in the meeting, please contact [Ethics.Commission@sec.nm.gov](mailto:Ethics.Commission@sec.nm.gov) at least one (1) week prior to the meeting*



## STATE ETHICS COMMISSION

### **Commission Meeting Minutes of December 15, 2023, | 11:00AM-1:15PM [Subject to Ratification by Commission]**

#### **Call to Order**

Chair Lang called the meeting to Order at 11:15 AM.

#### **1. Roll Call**

The roll was called; the following Commissioners were present:

Jeffrey L. Baker, Commissioner  
Stuart M. Bluestone, Commissioner  
Hon. Celia Castillo, Commissioner  
Hon. Dr. Terry McMillan, Commissioner  
Ronald Solimon, Commissioner  
Dr. Judy Villanueva, Commissioner  
Hon. William F. Lang, Chair

#### **2. Approval of Agenda**

Chair Lang sought a motion to approve the agenda. Commissioner Castillo moved to approve the agenda. Commissioner Bluestone seconded. Hearing no discussion or objections, the agenda was approved unanimously.

#### **3. Approval of November 3, 2023, Commission Meeting Minutes**

Chair Lang sought a motion for the approval of the minutes from the November 3<sup>rd</sup> 2023 Commission meeting. Commissioner Baker moved to approve the minutes. Commissioner Bluestone seconded. Hearing no discussion or objections, the minutes were approved unanimously.

#### **Commission Meeting Items**

#### **4. Advisory Opinion 2023-08**

General Counsel Boyd gave an overview of the advisory opinion which addressed the question:

*“Central New Mexico Community College (“CNM”) has obtained federal grant funds. The grant agreements between CNM and the federal government permit CNM to expend the federal funds it receives for the purchase of laptops and textbooks for student use. The question posed is whether CNM’s purchase of laptops and textbooks for use by its students nonetheless violates Article IX, Section 14 of the New Mexico State Constitution, commonly known as “the Anti-Donation Clause.”*

Chair Lang sought a motion to adopt Advisory Opinion 2023-08. Commissioner Bluestone moved to adopt the opinion; Commissioner Baker seconded. Hearing no discussion or objections, the advisory opinion was approved unanimously.

#### **5. Advisory Opinion 2023-09**

Special Counsel Caroline Manierre presented an overview of the advisory opinion which addressed the question:

- 1. “May a candidate enter into a contract with a direct family member for goods or services to the candidate’s campaign and pay the family member with campaign funds?”*
- 2. If a candidate uses personal funds to pay a family member for goods or services to the candidate’s campaign, may the candidate report the expenditure as a loan to the campaign and be reimbursed by the campaign?”*

Chair Lang sought a motion to adopt Advisory Opinion 2023-09. Commissioner Baker moved to adopt the opinion; Commissioner Bluestone seconded. Hearing no discussion or objections, the advisory opinion was approved.

#### **6. Annual Open Meetings Act Resolution**

Special Counsel Caroline Manierre presented an overview of the Commission’s proposed annual Open Meeting Act Resolution. Commissioner Castillo moved to adopt the resolution; Commissioner McMillan seconded. Hearing no discussion or objections, the resolution was adopted unanimously.

#### **7. 2023 Annual Report**

Director Farris presented on the Commission’s 2023 Annual Report. After some discussion, Commissioner McMillan moved to adopt the report; Commissioner Castillo seconded. The motion carried unanimously to adopt the 2023 Annual Report.



8. **Public Comment (pre-closed session)**

No public comments were made.

---Beginning of Executive Session---

Chair Lang sought a motion to enter executive session under NMSA 1978, §§ 10-15-1(H)(2) (limited personnel matters), 10-15-1(H)(3) (administrative adjudicatory proceedings), and 10-15-1(H)(7) (attorney-client privilege pertaining to litigation). Commissioner Bluestone moved to enter executive session; Commissioner Castillo seconded. Hearing no discussion, the Commission entered executive session.

9. Administrative Matters under Revised Uniform Law on Notarial Acts:  
(Branch)

- a. 2023-NP-03 *In re commission of Marsh* Request for approval of settlement agreement

10. Discussion regarding administrative matters under State Ethics Commission Act:  
(Farris)

- a. Administrative Complaint No. 2023-020
- b. Administrative Complaint No. 2023-023

11. Executive Director 2023 evaluation and salary  
(Lang)

*The matters discussed in the closed meeting were limited to those specified in the motion to enter executive session. After concluding its discussion of these matters, the Commission resumed public session upon an appropriate motion.*

---End of Executive Session---

12. **Action on Administrative matters under the Revised Uniform Law on Notarial Acts:**  
(Branch)

- a. **Commission sought motion to approve settlement agreement 2023-NP-03 *In re commission of Marsh*:** Commissioner Bluestone moved as stated above, Commissioner Solimon seconded. All Commissioners and the Chair voted affirmative and approved the settlement agreement.

13. **Action on Administrative Complaints Nos. 2023-020 and 2023-023:**  
(Farris)

Director Farris asked the Commission for the following motions regarding actions on Administrative Complaints:

- a. **Commission staff sought motion of partial dismissal on Administrative Complaint No. 2023-020:** Commissioner Castillo moved as stated above, Commissioner McMillan seconded. Commissioner Villanueva recused. All other Commissioners and the Chair voted in the affirmative and the matter was partially dismissed.
  
- b. **Commission staff sought motion of dismissal on Administrative Complaint No. 2023-023:** Commissioner Bluestone moved as stated above, Commissioner McMillan seconded. Commissioner Villanueva recused. All other Commissioners present voted in the affirmative and the matter was dismissed.

#### 14. **Discussion of Next Meeting**

Chair Lang confirmed that the next regularly scheduled meeting will take place virtually, February 2<sup>nd</sup> 2024 at 9:00 AM.

#### 15. **Public Comment**

No public comments were made.

#### 16. **Adjournment**

Chair Lang raised the adjournment of the meeting. With no objections made, the meeting was adjourned at 1:15 PM.

*For inquiries or special assistance, please contact [Ethics.Commission@sec.nm.gov](mailto:Ethics.Commission@sec.nm.gov)*



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2024-01**

February 2, 2024<sup>1</sup>

### **QUESTIONS PRESENTED<sup>2</sup>**

Following the State Ethics Commission’s issuance of Advisory Opinion 2023-07, in which the Commission opined that the Procurement Code, NMSA 1978, §§ 13-1-28 to -199 (1984, as amended through 2023), applies to the selection of contracts for legal services on a contingent-fee basis, on December 12, 2023, the Commission received a related request for an advisory opinion regarding the procurement of contracts for outside counsel. That request explains:

Based in part on staffing limitations and the extensive resources needed for certain cases and types of litigation, [the Attorney General’s Office (“AGO”)] frequently requires the assistance of outside law firms to represent the

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<sup>1</sup> This is an official advisory opinion of the New Mexico State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion. NMSA 1978, § 10-16G-8(C) (2019).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue[.]” NMSA 1978, § 10-16G-8(A)(2) (2019). “When the Commission issues an advisory opinion, the opinion is tailored to the ‘specific set’ of factual circumstances that the request identifies.” State Ethics Comm’n Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On December 12, 2023, the Commission received a request for an advisory opinion that detailed the issues as presented herein.

State. This is particularly true for complex affirmative civil litigation in the subject areas of consumer protection, environmental protection, civil rights, securities, antitrust, and fraud against taxpayers. In some cases, [the AGO] may become aware of claims on its own and seek outside assistance; in others, private law firms bring claims or theories of recovery to [the AGO] based on their independent investigation or other proprietary information. Also, at times, the State may need to act quickly to file an action in order to avoid the running of a statute of limitations, a statute of repose, or other filing deadline. For example, a lead plaintiff motion in a securities case must be filed within sixty days of the complaint, much of which can elapse before [the AGO] even learns of a fund's eligibility for lead plaintiff status. These circumstances can make it challenging to establish a uniform procurement process.

Considering that context, the request poses two questions regarding the application of the Procurement Code to the AGO's procurement of contracts for legal services:

1. Would the AGO be in compliance with the Procurement Code if it (a) generates a list of approved law firms by issuing a request for proposals ("RFP") for legal representation on any affirmative AGO litigation in which the services of outside counsel are needed without reference to a specific case or subject area and (b) later selects one of the approved law firms to represent the State in specific matters as they arise without using an additional, separate procurement process under the Code for each matter?
2. Is there a method for an emergency procurement of legal services when compliance with the normal procurement methods in the Procurement Code would cause the State to lose a claim due to the expiration of a statute of limitations or filing deadline?

## ANSWERS

1. Yes.
2. Likely no.

## ANALYSIS

### I.

Under the Procurement Code, the AGO may award two or more contracts to private law firms for legal representation of the State in pursuit of the State's claims and, following those multiple contract awards, assign work to particular contract awardees in the AGO's discretion.<sup>3</sup> The Code classifies such procurements as "multiple source awards," and Section 13-1-153 governs how state agencies and local public bodies may award multiple source contracts. The section provides:

A multiple source award may be made pursuant to Section 13-1-110 NMSA 1978 or Section 1 of this 2007 act when awards to two or more bidders or offerors are necessary for adequate delivery or service. Multiple source awards shall not be made when a single award will meet the needs of the state agency or a local public body without sacrifice of economy or service. Awards shall be limited to the least number of suppliers in one geographical area necessary to meet the requirements of the state agency or a local public body. A multiple source award shall be based upon the lowest responsible bid or proposal received in each

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<sup>3</sup> We observe that the New Mexico Office of the Attorney General recently changed its name to the New Mexico Department of Justice. Following the terms of the request, in this advisory opinion we will refer to the agency as AGO. See Press Release, Empowering Justice: Attorney General Raúl Torrez Unveils New Identity as the New Mexico Department of Justice (Jan. 10, 2024), <https://nmag.gov/empowering-justice-attorney-general-raul-torrez-unveils-new-identity-as-the-new-mexico-department-of-justice/>.

geographical area unless the award is made in response to a qualifications-based proposal.

NMSA 1978, § 13-1-153 (2007).<sup>4</sup>

The Code also requires that, before resorting to a multiple source award, “[t]he state purchasing agent or central purchasing office shall make a *determination* setting forth the reasons for a multiple source award.” NMSA 1978, § 13-1-154 (1984) (emphasis added). Under the Code, “determination” is a defined term, meaning “the written documentation of a decision of a procurement officer including findings of fact required to support a decision.” NMSA 1978, § 13-1-52 (1984). Such determinations become part of the procurement file to which they pertain. *See id.*

Under the Procurement Code, “only certified chief procurement officers” may “make determinations.” NMSA 1978, § 13-1-95.2(E)(1) (2013). Because the Code requires that a “determination” support the use of a multiple source award, § 13-1-154, the agency’s chief procurement officer must be involved in the agency’s decision to use a multiple source award. Considering the Code’s definition of “determination,” we perceive some ambiguity regarding both the extent and the exclusivity of the chief procurement officer’s role in *making* that decision for the agency; however, at the very least, the chief procurement officer must *document* the decision and the reasons and findings that support it. *See* §§ 13-1-52; 13-1-95.2(E)(1).<sup>5</sup>

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<sup>4</sup> Section 1 of the 2007 Act is Laws 2007, Chapter 312, Section 1, which has been codified at 13-1-154.1, and governs multiple source architectural, engineering, and indefinite quantity construction contracts. *See* 13-1-154.1 (2020).

<sup>5</sup> The Code defines “determination” as “the written documentation of a decision of a procurement officer including findings of fact required to support a decision.” § 13-1-52. The Code also defines “procurement officer” as “any person or a designee authorized by a state agency or a local public body to enter into or administer contracts and make written determinations with respect thereto.” NMSA 1978, § 13-1-75 (1984). Procurement officers, therefore, are those individuals in a state agency or local public body with the authority to bind the agency in contract. *See id.* In addition to procurement officers, the Code creates the office of the “chief procurement officer,” which the Code defines as “that person within a state agency’s or local public body’s central purchasing office who is responsible for the control of procurement of items of tangible personal property, services or construction.” NMSA 1978, § 13-1-38.1 (2013). “Chief procurement officer” includes the state purchasing agent. *Id.* While only the chief procurement officer may make determinations pursuant to the Code, § 13-1-95.2(E)(1), under the foregoing definitions, that reservation of authority strictly means that the chief

For the AGO to award multiple contracts to two or more private law firms to pursue the State’s affirmative litigation, the AGO, through its procurement officers and chief procurement officer, must decide that “awards to two or more offerors are necessary” and that a single award to a single private law firm will not meet the needs of the agency “without sacrifice of economy or service.” § 13-1-153. Considering the extent and the different types of claims that the State affirmatively litigates as a plaintiff, a single award to a single private law firm to pursue the State’s civil actions would not serve New Mexico; therefore, contract awards to two or more private law firms are necessary. This necessity is likely the case not only with respect to the State’s affirmative litigation generally, but also with respect to each of the different kinds of plaintiff-side, civil litigation that the request references—*e.g.*, consumer protection, environmental protection, civil rights, securities, antitrust, and fraud against taxpayers, among others. It is very likely that in each of these areas of civil litigation, the State requires more than one contract with outside counsel to affirmatively litigate the State’s claims and seek recovery for New Mexico.

Accordingly, the AGO may use a request for proposals for a multiple source award for outside counsel across all the AGO’s categories of affirmative litigation, as the request seems to contemplate.<sup>6</sup> As with any procurement by a request for

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procurement officer (and no one else) must make the “written documentation” of a decision of a procurement officer. § 13-1-52. By contrast, the Code does not say that *only* the chief procurement officer may make decisions under the Code. Rather, the Code suggests that “procurement officers”—*i.e.*, those individuals, in addition to the chief procurement officer, with authority to bind an agency in contract—may make decisions under the Code. Accordingly, we do not understand the Code, as currently drafted, to vest exclusive authority in chief procurement officers to make decisions under the Code, including the decision whether a multiple source award is available. That authority, rather, seems to reside with any of the agency’s procurement officers, provided again that the agency’s chief procurement officer is involved, at the very least, to document the decision.

<sup>6</sup> We observe that the use of a single request for proposals to make a multiple source award to outside counsel to represent the State is not a novel feature of New Mexico state government. Indeed, the Risk Management Division of the General Services Department issues a global request for proposals for outside counsel to provide legal services to support the defense of: (i) the public liability fund in cases related to the Tort Claims Act, medical malpractice, law enforcement and corrections liability, employment and ethics laws, civil rights, insurance, subrogation and contractual indemnity, construction, property rights and usage, and class action litigation; and (ii) the worker’s compensation retention fund in workers compensation matters and appeals. Once the Risk Management Division has awarded those contracts, the Division

proposals, the procuring agency must abide by the Code’s provisions that govern the use of competitive sealed proposals. *See* NMSA 1978, §§ 13-1-111 to 13-1-117 (1984, as amended through 2011). While the request contemplates the use of a single request for proposals for affirmative litigation contracts, we note that the AGO may also use requests for proposals for multiple source awards for outside counsel for discrete categories of civil actions. The AGO need only determine that, for a particular kind of affirmative litigation (such as environmental production or antitrust), awards to two or more private firms “are necessary for adequate delivery or service” and that an award to a single private firm will not meet the needs of the State “without sacrifice of economy or service.” § 13-1-153.

Whether the AGO uses one or several requests for proposals for outside counsel, the procurement results in multiple contract awards to responsible offerors whose proposals are most advantageous to AGO and to the State. The contracts may include compensation terms and terms governing the process by which the AGO will select contract awardees for particular matters. Once the contracts are in place, the AGO may then assign work by purchase order to contract awardees as appropriate to the needs of the AGO in its pursuit of the State’s civil claims. *See* NMSA, § 13-1-77 (2001) (defining a purchase order as “the document issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction”). In this way, the AGO’s purchase of services from a particular vendor following a multiple source award functions akin to a state agency’s purchase of services by purchase order pursuant to a federal supply contract or a statewide price agreement. *See* NMSA 1978, § 13-1-129(A) (1991) (allowing for purchases under federal and statewide price agreements so long as the purchase order adequately identifies the price agreement relied upon).

## II.

Turning to the request’s second inquiry, we do not believe that in most cases the Procurement Code allows a state agency to make an emergency procurement of legal services to represent the State in affirmative litigation when compliance with

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then “assign[s] the most appropriate legal representation for legal matters related to its mission to defend the State.” *See* General Services Department, Risk Management Division, Request for Proposals #24-350-4905-0003, at 2 (Nov. 1, 2023), <https://www.generalservices.state.nm.us/wp-content/uploads/Legal-Services-RFP-09-2023GR-10-30-2023.pdf> (last accessed Dec. 26, 2023).



the Code’s provisions would cause the State to lose a claim due to the expiration of a statute of limitations or filing deadline. Our view is based on the text of Section 13-1-127, which governs emergency procurement. Section 13-1-127 provides in pertinent part:

The state purchasing agent or a central purchasing office may only make an emergency procurement when the service, construction or item of tangible personal property procured:

(1) is needed immediately to:

(a) control a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event; or

(b) plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event; *and*

(2) cannot be acquired through normal procurement methods.

NMSA 1978, § 13-1-127(A) (2019) (emphasis added). Broken down, an emergency procurement is authorized only when the procurement is “needed immediately” for: (i) a “serious threat”; (ii) “to public health, welfare, safety or property”; (iii) which is “caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event[.]” or for the planning or preparation for such an event; and (iv) the procurement “cannot be acquired through normal procurement methods.” *Id.* In order to meet this exception, each of these requirements must be met. *See, e.g.,* NMSA 1978, § 12-2A-18(A) (“A statute or rule is construed, if possible, to: (1) give effect to its objective and purpose; (2) give effect to its entire text . . .”).

It is unlikely that the conditions that support an emergency procurement fairly characterize the circumstances that the request posits. While there might be situations where an imminent statute of limitations deadline jeopardizes a newly identified claim and thus arguably poses a threat to public property, it would be the rare case in which that threat were “*caused by* flood, fire, epidemic, riot, act of terrorism, equipment failure, or similar event[.]” § 13-1-127(A) (emphasis added). As a general matter, therefore, the AGO would not be allowed to use the emergency procurement section for the situations the request contemplates.

This is not to say, however, that there are *no* circumstances under which the AGO may utilize Section 13-1-127. In situations where the public health, welfare, safety or property is subject to serious threat caused by one of the conditions the statute contemplates, it is conceivable that the AGO might properly make an emergency procurement for special attorney services, for example, to seek injunctive relief connected to the threat that gives rise to the emergency.<sup>7</sup> But that hypothetical is different than the circumstance of the State potentially losing a claim due to the running of a statute of limitations in, for example, a securities matter.

Finally, we emphasize that the AGO could take proactive measures to address the circumstances presented in the request—namely, those situations in which the agency becomes aware of a claim that a statute of limitations or statute of repose jeopardizes. By making a multiple source award, the AGO could enter into standing contracts with several firms able to begin representation of the State on any newly identified claim for which a statute of limitations might run.

## CONCLUSION

The Procurement Code allows the AGO to award two or more contracts to private law firms for legal representation of the State. Through a multiple source award, the AGO could have such counsel on contract so the AGO would be able to assign work by purchase order as appropriate, including for those situations where previously unknown claims are discovered on the eve of a statute of limitations deadline. By contrast, the Code likely does not allow the AGO to make an emergency procurement of legal services to file an action to avoid the running of a statute of limitations, a statute of repose, or other filing deadline.

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<sup>7</sup> Where such emergency circumstances are present and normal procurement methods cannot be utilized, the AGO must follow the requirements set forth in statute and regulation. This includes that the AGO must “employ a competitive process to the extent practicable under the circumstances” and “use due diligence in determining the basis for the procurement and in selecting the contractor.” § 13-1-127(B). Further, such “procurements shall be limited to those services, construction, or items of tangible personal property necessary to meet the emergency.” 1.4.1.60 NMAC. In addition, the AGO must outline its determination in writing, including the basis for the procurement and its selection of the contractor, must post notice of the procurement, and must maintain records of the procurement and report the procurement under certain circumstances. *See* § 13-1-127(C), (D); § 13-1-128; 1.4.1.62–1.4.1.64 NMAC.

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**

**JEFFREY L. BAKER, Commissioner**

**STUART M. BLUESTONE, Commissioner**

**HON. CELIA CASTILLO, Commissioner**

**HON. DR. TERRY MCMILLAN, Commissioner**

**RONALD SOLIMON, Commissioner**

**DR. JUDY VILLANUEVA, Commissioner**



## NEW MEXICO STATE ETHICS COMMISSION

Hon. William F. Lang, Chair  
Jeffrey L. Baker, Member  
Stuart M. Bluestone, Member  
Hon. Celia Castillo, Member  
Hon. Dr. Terry McMillan, Member  
Ronald Solimon, Member  
Dr. Judy Villanueva, Member

### **RESOLUTION NO. 2024-01 Authorizing Media Engagement and Public Communication Guidelines for State Ethics Commissioners**

WHEREAS, THE NEW MEXICO STATE ETHICS COMMISSION (“Commission”) met virtually February 2, 2024, at 9:00 A.M.

WHEREAS, the Commission encourages media engagement and public communication that serve as a tool for fostering community understanding, involvement, and awareness, because, properly conducted, media relations align with the Commission’s mission of promoting the integrity of state government through the interpretation, enforcement, and improvement of New Mexico’s campaign finance, lobbying, procurement, and governmental conduct laws; and

WHEREAS, the Commission recognizes the relevance of Commissioners’ media engagement to keep the public well-informed about ethical matters across New Mexico; and

WHEREAS, in Commission administrative proceedings, the Commissioners are authorized to sit in a quasi-judicial capacity to consider and decide appeals from hearing officer final decisions; and

WHEREAS, the Commission and Commissioners must abide by the confidentiality requirements provided by NMSA 1978, § 10-16G-13 (2019); and

WHEREAS, the purpose of the Commission's Media Engagement Guidelines is to set forth the Commission's goals and procedures relating to the Commission's media presence, considering the applicable confidentiality requirements, the Commissioners' quasi-judicial function in administrative proceedings, and the Commission's bi-partisan and diverse membership;

NOW, THEREFORE, BE IT RESOLVED that the Commission hereby establishes the following Media Engagement Guidelines for Commissioners when engaging in various forms of media communications. *See* Exhibit 1.

Adopted by the New Mexico State Ethics Commission this 2nd day of February 2024.

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The Hon. William F. Lang  
New Mexico State Ethics Commission  
Chair

## **Introduction**

The State Ethics Commission (Commission) is often contacted by members of the community wanting information about the Commission's work. This often includes members of the news media seeking direct comment and/or asking specific questions. The Commission receives these inquiries via email and phone, sometimes via text message. When possible, the Commission responds to these inquiries via email (which provides better tracking of comments and cases). The Commission provides continual updates on its work through its website: <https://www.sec.nm.gov>.

When members of the news media seek comments from a Commissioner, the Commissioner should operate within appropriate guidelines, particularly when expressing personal beliefs or opinions. These communications include but are not limited to opinion editorials, letters to the editor, blogs, podcasts, interviews and social media posts or comments. These guidelines are established to protect the Commission from unforeseen circumstances where unchecked media communications could lead to conflicting interpretations of the Commission's stance on certain issues and could compromise the Commission's commitment to bipartisanship or impartiality in its quasi-judicial appellate role in administrative proceedings. These guidelines also safeguard the Commission's ability to decide appeals from hearing officer decisions in administrative proceedings.

These guidelines will also serve to protect Commissioners from violating the confidentiality provisions set forth in NMSA 1978, § 10-16G-13. Given the criminal penalties attached to violations of Section 10-16G-13, protecting individual Commissioners from potentially violating this statute is paramount.

The Executive Director and/or Communications Manager facilitates news media inquiries and speaks on behalf of the State Ethics Commission. The Chair also may speak on behalf of the Commission. Members of the staff may be asked to provide comment to news media as directed by the Executive Director. Members of the Commission may be asked to provide comment to news media as requested by the Chair.

As a State Ethics Commissioner, it is important to actively engage respective constituents and communities either directly or through media engagement that is consistent with these guidelines. Providing proactive outreach or reactive comment helps to inform the public about the Commission's work and purpose in the democratic process. The news media provides a pathway to inform many of our

respective constituencies, fostering community understanding, engagement, and awareness. Well-informed and positive engagement with news media can help educate constituents and proliferate the agency's mission of promoting integrity in state government for the people of New Mexico.

The following guidelines aim to balance Commissioners' engagement with the media while serving to protect both the Commission's quasi-judicial function and individual Commissioners from inadvertently violating duties of confidentiality.

### **Guidelines for Commissioners when Engaging with the Media:**

1. **Clearly Identify Personal Capacity:** Commissioners should clarify when they are communicating as individuals and not as official spokespersons for the Commission. Unless the Commission has granted prior approval of the statements expressed, the Commissioner should include a disclaimer that any opinions expressed are their own and do not represent any official stance of the Commission.
2. **Avoid Official Title:** Commissioners should refrain from using their title as "State Ethics Commissioner" to identify themselves in opinion editorials or related media communications not otherwise previously approved by the Commission. Such avoidance protects against an interpretation that an individual Commissioner is speaking as an agent for the Commission.
3. **Conflicts of Interest:** Commissioners should keep in mind that they sit as a quasi-adjudicatory body. Just as a Commissioner would recuse from matters that propose a conflict of interest that could compromise their duty to impartiality, Commissioners should use similar discretion and judgement in their media communications.
4. **Maintain Impartiality and Bipartisanship:** Commissioners should avoid using controversial language or making any leading or forward-looking statements that could in any way compromise the Commission's commitment to bipartisanship or the Commission's impartiality in its quasi-judicial appellate role in administrative proceedings. Communications should aim to promote constructive dialogue and public awareness and avoid any language that could be construed as partial and directed toward a specific matter that has or could come before the Commission for decision.

5. **Avoid Direct Inquiries:** Commissioners should exercise discretion when answering inquiries from news media outlets. They should generally redirect such inquiries to the Commission's Executive Director, who will work with the Commission's staff to respond to the news media inquiry.
6. **Review by Executive Director or Communications Manager:** Generally, all communications between Commissioners and media outlets that may be construed with their position as a Commissioner should be reviewed by the Executive Director and the General Counsel before publication to ensure the communication does not violate confidentiality provisions or expose the Commission to unnecessary legal risk.
7. **Avoid Commentary on Ongoing Matters:** Commissioners should refrain from making comments or disclosures concerning or alluding to administrative matters, including complaints, General Counsel investigations, or settlement negotiations, particularly when these administrative cases have not been publicly disclosed pursuant to the State Ethics Commission Act. Commissioners should also refrain from making comments or disclosures concerning or alluding to authorized or ongoing litigated matters, informal advisory letters, or the identity of requesters of formal advisory opinions.
8. **Confidentiality of Executive Sessions:** Commissioners should not allude to disagreements, votes, or personal opinions related to matters discussed during executive sessions. Such sessions are confidential and must be treated as such even when conducting personal communications. This policy safeguards Commissioners from any claims, whether substantiated or not, regarding violations of the confidentiality provisions. This policy also protects the Commission's attorney-client privilege, deliberative process privilege, and work product protections to their fullest extents.
9. **Staff Media Communications and Commission Approval:** There may be times when the Commission staff wishes to draft a letter to the editor, an op-ed, or other long-form communication, as a statement of the Commission as a body. Before submission to any news media outlet, the staff will present the communication to the Commission for discussion and approval.



**Effect.** These guidelines are an internal Commission policy. It creates no enforceable rights, duties or immunities for any individual person or entity. The Commission may from time to time amend this policy by way of resolution at a properly noticed Commission meeting.

## **Procurement Code Ethics An Important Protection Against Public Corruption in New Mexico**

[By Stuart M. Bluestone, New Mexico State Ethics Commissioner]

Public procurement ethics is an important but often little understood aspect of governmental ethics in New Mexico. Government officials have estimated that about \$13 Billion of all public money spent in our State each year is devoted to procuring goods and services. (See Program Evaluation: Obtaining Value in State Procurement and Issues with Non-Competitive Methods, LFC Program Evaluation Report #16-09, October 27, 2016.) Maintaining the highest ethical standards in public procurement is necessary to guard against public corruption.

The New Mexico Procurement Code, and contract-related provisions of the New Mexico Governmental Conduct Act, provide important protections against public corruption and the misuse of taxpayer dollars. The public and all government officials and employees should be well aware of the Code and honor both the letter and the spirit of the law to ensure ethical and fair dealings when contracting for the expenditure of public funds to provide goods and services to New Mexicans.

The key purposes of the Code are stated in the law's own words, right at the beginning of the statute: "The purposes of the Procurement Code are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity." Section 13-1-29 NMSA 1978.

In the nuts and bolts of the law, what this means is that once a decision is made to use either the competitive sealed bid or proposal process for public funds to be spent on goods or services, there has to be fair dealing by the government at each and every step of the way. The integrity of the public process has to be strictly adhered to; the public's money should never be spent in a way a public official or employee wants simply to benefit a friend, colleague, relative, campaign contributor or anyone for any reason other than through a fair, competitive sealed bid or proposal evaluation process that picks winners based solely on the merits of their bid or proposal and track record of performance, with limited exceptions for small purchases, emergencies, sole source and contracts between public agencies.

The Procurement Code sets up a process to ensure that bids and proposals to win the right to provide goods or services to the public are determined in a fair, merit-based system. It is unlawful for a public official or employee to arrange for a bid or proposal to

go to a certain person or entity without regard to the objective, fair decision-making process the Code directs. And this applies up-and-down at every level of government in our State. As a general rule it applies to all state agencies, local school boards and municipalities; all County Commissioners; and all State elected and appointed public officials and employees, including the Governor, Lt. Governor, Attorney General, State Land Commissioner, State Auditor, State Treasurer and every Cabinet Secretary and Agency head throughout New Mexico.

Even before an announcement is made that public funds are available to be spent on a certain project, there can be no shenanigans or “inside games” played. No public official can tell his or her employees before a bid or proposal is put out to spend certain public money that he or she wants to see the winner be person or company X, Y or Z. They cannot allow the public competitive bidding or proposal processes to be a sham.

And they cannot short-circuit the Procurement Code’s requirements. For example, consider public employees who are chosen pursuant to the Procurement Code to decide on which person or entity should win a bid or proposal and their boss who believes he or she is ultimately responsible for all agency decisions. If the public employees go through the whole fair and objective evaluation process and choose company X, but their boss then tells them, directly or indirectly, and even in good faith, to reverse their decision and give the contract instead to Y, then that would violate the Code. Every public official and employee should understand that.

As the New Mexico Supreme Court has stated, “The Procurement Code protects against the evils of favoritism, nepotism, patronage, collusion, fraud, and corruption in the award of public contracts.” Planning & Design Solutions v. City of Santa Fe (1994). All public officials and employees, and the public, should know and follow that directive to ensure there is always fair dealing when it comes to the expenditure of public funds.

Our New Mexico Procurement Code stands as a bulwark against corruption. It is true at our local and state level, and our federal government leaders have confirmed that the fight against corruption is also a core United States National Security interest. See, for example, the United States Strategy on Countering Corruption, pursuant to the National Security Study Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest, December 2021, which states: “When government officials abuse public power for private gain, they do more than simply appropriate illicit wealth. Corruption robs citizens of equal access to vital services, denying the right to quality healthcare, public safety, and education. It degrades the business environment, subverts economic opportunity, and exacerbates inequality. . . . As a fundamental threat to the rule of law, corruption hollows out institutions, corrodes public trust, and fuels popular cynicism toward effective, accountable governance.”

The New Mexico Procurement Code is an important tool to fight corruption in our State.

[Mr. Bluestone is a retired public sector attorney who has written this as an expression of his personal views. It does not necessarily reflect the views of the State Ethics Commission on which he serves.]