

Timothy M. Keller
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OFFICE OF THE STATE AUDITOR

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State Auditor Tim Keller Issues Executive Order to Support New Mexico Businesses

SANTA FE, NM – Today, State Auditor Tim Keller issued Executive Order 2017-001 to support New Mexico businesses. The order applies to the Office of the State Auditor (OSA) and takes effect immediately. The order lists specific ways the office will help to level the playing field for local business in the procurement process. While state law provides certain local preferences for large government contracts, much of state agencies' spending falls below that threshold. The Executive Order is aimed at ensuring that New Mexico businesses have the opportunity to compete for these smaller purchases.

“Our recent reports on vast amounts of government dollars flowing to out-of-state companies shows what an opportunity we have to support our local economy through changes in procurement practices,” stated State Auditor Tim Keller. “While we highlight statewide trends, it’s important to do what we can in our own office. That’s why I issued an Executive Order to level the playing field when the State Auditor’s office is procuring goods and services. Though we are but a small agency, this is a way to demonstrate leadership for how any agency or local government can step up and use its purchasing power for the good of our state.”

The Executive Order lists three key items:

- 1) The OSA will compare price quotes on a pre-tax basis. This change will address the structural tax disadvantage New Mexico companies face when competing for state business. Many out-of-state companies pay a lower gross receipts tax, creating a disincentive to hire local companies in providing services.
- 2) The OSA will take reasonable steps to ensure that it reaches out to New Mexico businesses when seeking quotes. This applies to small purchases that do not go through a formal competitive procurement process but make up the majority of government spending.
- 3) State Auditor Tim Keller calls upon other agency heads to consider these steps as well. For these changes to have a broad impact to New Mexico’s economy, the administration would need to issue similar requirements across state government.

The Executive Order is attached.

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EXECUTIVE ORDER 2017-001

SUPPORTING NEW MEXICO BUSINESSES

WHEREAS, Section 1 of Article V of the New Mexico Constitution vests the State Auditor with the executive power over the New Mexico Office of the State Auditor;

WHEREAS, the purposes of the Procurement Code [Chapter 13, Article 1] 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;

WHEREAS, New Mexico has also long maintained a policy of giving government contracting preference to businesses that contribute to the economy of the State of New Mexico by maintaining facilities within the State and employing residents of the State (N.M. Att'y Gen. Op. 69-42 (1969));

WHEREAS, according to the General Services Department, the State of New Mexico purchases over \$5 billion in goods and services each year;

WHEREAS, pursuant to NMSA 1978, Section 13-1-21, preferences for resident businesses are only applicable when state agencies engage in formal competitive processes for invitation for bids (IFBs) or requests for proposals (RFPs);

WHEREAS, because of the myriad of exemptions and exclusions in the Procurement Code, such as those pertaining to small purchases, sole sources, and emergencies, the Office of the State Auditor's research into government procurement has revealed that most state agency purchases of goods and services other than construction are not subject to formal competitive processes for IFBs or RFPs, thus avoiding any preference for resident businesses for most government spending;

WHEREAS, vendors providing services to state agencies are required to collect gross receipts taxes;

WHEREAS, the gross receipts tax for local businesses in communities across the state ranges from 5.5 percent to 8.9375 percent, in contrast to the state gross receipts tax paid by out-of-state businesses of only 5.125 percent, placing resident businesses at a competitive, structural disadvantage for price quotes compared on an after-tax basis;

WHEREAS, state agencies, as market participants, should take steps to support New Mexico businesses capable of providing goods and services by ensuring they have an opportunity to compete for government business on a fair playing field;

NOW, THEREFORE, I, Timothy M. Keller, State Auditor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and Laws of the State of New Mexico, do hereby order as follows:

1. When evaluating quotes for services (including professional services), the Office of the State Auditor shall compare quotes on a pre-tax basis (exclude applicable state or local gross receipts taxes).
2. To the maximum extent allowable under the Procurement Code, when procuring services (including professional services) or tangible personal property, the Office of the State Auditor shall take reasonable steps to identify and include, if possible, at least one New Mexico business when seeking quotes.
3. Nothing in this order shall be construed to limit the discretion of the Office of the State Auditor to select a vendor that best meets the needs of the agency in a manner consistent with the Procurement Code, nor shall it create any enforceable right or cause of action.

I RECOMMEND, that all executive, legislative or judicial agencies, boards, and commissions that function outside the authority of the State Auditor consider adopting similar measures.

THIS EXECUTIVE ORDER shall take effective immediately and shall remain in effect until such time as it is rescinded by the State Auditor.

**SIGNED AT THE OFFICE OF THE STATE AUDITOR
THIS 20th DAY OF JUNE, 2017.**

**WITNESS MY HAND AND THE GREAT SEAL
OF THE NEW MEXICO STATE AUDITOR'S OFFICE**



**TIMOTHY M. KELLER
STATE AUDITOR**

