

## Opinion No. 65-58

April 5, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

**TO:** C. R. Sebastian, Director, Department of Finance and Administration, Santa Fe, New Mexico

### QUESTION

#### QUESTIONS

1. May the State Purchasing Agent, without letting a bid, enter into a joint purchase with the Federal Government for the purchase of equipment in behalf of the Adjutant General of new Mexico on a bid let by the Federal Government?
2. If the State Purchasing Agent must publish for separate bids and is unable to get a lower bid than the one obtained by the Federal Government, may he then purchase on the joint bid with the Federal Government?

#### CONCLUSION

1. No.
2. See Analysis.

### OPINION

#### {\*97} ANALYSIS

Both of your questions are controlled by the statutes covering {\*98} the State Purchasing Agent, Section 6-7-1, N.M.S.A., 1953 Compilation, et seq. Subsection E of Section 6-7-4, supra, provides that no department shall make any purchase except through the purchasing agent, as provided in Sections 6-7-1 through 6-7-13, supra. A department is defined in Section 6-7-1, supra, as "any state department, office, board, commission, bureau, state institution, or other state agency. . . ." The Adjutant General is certainly within the definition of a department and is therefore bound to purchase through the State Purchasing Agent.

Subsection A of Section 6-7-4, supra, provides that any purchase involving the expenditure of more than \$ 1,000 must be based upon sealed competitive bids. The section also sets out how the call for bids must be advertised. There are exceptions to the requirements of Subsection A, but because of the amount of money involved and the nature of the purchase, none is applicable to the situation you present. We therefore

must conclude that the State Purchasing Agent may not enter into a joint purchase with the Federal Government on a bid let by the Federal Government if the portion to be paid for by the State of New Mexico has not been let for bids in accordance with the statutes noted above.

Subsection D of Section 6-7-4, supra, provides that the purchasing agent may reject any group of bids with a written statement declaring the reason therefor. Thereafter the rejected bids must be re-advertised and if the second biddings are also unacceptable, the purchasing agent, upon approval of the State Board of Finance, may purchase in the open market if a better price is available. It is unquestionable that the statutes under discussion are designed to secure the best price possible to the State. We, therefore, see no reason why the bid received on the Federal Government bid letting, if lower than the bids received by the State, may not be made the basis for rejecting the latter bids. Of course this will necessitate the re-advertising of the rejected bids. We also see no reason why after the re-bid and their rejections, if they are still higher than the Government bids, the State Board of Finance may not approve the purchase on the basis of the Government bid, as opposed to buying in the open market, since this should at this point represent the lowest price available to the State.