

## Opinion No. 66-129

December 5, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Gary O'Dowd, Assistant Attorney General

**TO:** Mr. Dante Vaio, State Purchasing Agent, State Capitol Building, Santa Fe, New Mexico

### QUESTION

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1. Is a bond or deposit required on all bids of \$ 1,000.00 or more, or may the deposit or bond be required on the bids by a set figure or regulation as set forth by the State Purchasing Agent?
2. If a bond is required on all bids over \$ 1,000.00, may a firm file an open annual bond, or a bond of sufficient amount with the State Purchasing Agent to cover his bids?

#### CONCLUSIONS

1. See analysis.
2. Yes.

### OPINION

#### {\*172} ANALYSIS

Section 6-7-4 (C) N.M.S.A., 1953 Compilation, provides in part as follows:

"The purchasing agent is authorized and empowered to make reasonable rules and regulations governing the preparation and submission of bids to facilitate the work of his office, and may prescribe by rules the standards of quality and construction as seem to him best for the public service. The purchasing agent shall determine the amount and character of the bond or deposit **which shall accompany all bids. . . .**" (Emphasis added.)

It is a fundamental rule of statutory construction that "shall" should be given its ordinary meaning and be construed as a mandatory word. **Application of Sedillo**, 66 N.M. 267, 347 P.2d 162 (1959). We therefore conclude that the Purchasing Agent must require that a bond or deposit accompany all bids. This requirement cannot be varied by rule or regulation of the Purchasing Agent.

We realize that by giving a mandatory construction to the above quoted section the state will be subjected to costly delays in awarding standard bids such as repair parts, office supplies, printing, and medicine, as it takes from 5 to 10 days before a performance bond can be submitted to the State Purchasing Office. However, perhaps a partial solution to this problem is reached by our conclusion to your second question.

Your second question asks if a firm may file an open annual bond or a bond of sufficient amount to cover all of his bids over \$ 1,000.00. Our answer is yes. However, this open annual bond should be in an amount sufficient to cover performance of all contracts the firm is performing {*\*173*} for the state at any given time during the year.