

## Opinion No. 69-113

September 18, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Mark B. Thompson, III,  
Assistant Attorney General

**TO:** Paul Becht, State Purchasing Agent, State Capitol Building, Santa Fe, New Mexico

### QUESTIONS

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Under what circumstances may a state agency or local public body not under the supervision of the state purchasing agent purchase materials or services which are the subject of an existing state purchasing agent contract without purchasing under that contract and without submitting the purchase to bid?

#### CONCLUSION

See Analysis.

### OPINION

#### {\*180} ANALYSIS

Under the Public Purchases Act, Section 6-5-17 to -34, N.M.S.A., 1953 Comp. (P.S. 1969), all state agencies and local public bodies are required to submit their proposed purchases to bid **except** as otherwise specifically provided {\*181} in the Act. Some state agencies and all local public bodies are excluded from the requirement of purchasing through the state purchasing agent [these agencies and public bodies will hereinafter be referred to as "non-SPA purchasers"], but this does not exclude them from the requirement of submission of purchases to bid.

At the outset, it should be noted that this problem concerns purchases which are not exempted from the Public Purchases Act [Sections 6-5-17 to 6-5-34, N.M.S.A., 1953 Comp. (P.S. 1969)] by Section 6-5-34, **supra**, and which are not exempted from the bid requirements of that act by reason of emergency [Section 6-5-27, **supra**] or because of the small size of the purchase [Section 6-5-26(D), **supra**].

When the State Purchasing Agent has entered into a contract which provides that non-SPA purchasers shall purchase under the contract, the purchases must be made under the contract from the designated vendor or submitted to bid. § 6-5-24(D) (6), N.M.S.A., 1953 Comp., 1969 Supp. When the State Purchasing Agent has entered into a contract which permits, but does not require the non-SPA purchaser to purchase under the contract, the purchases may be made by submission to bids, purchasing under the SPA

contract or purchasing from any other vendor, provided the price obtained, etc., is equal to or better than the terms of the SPA contract. § 6-5-24 (D) (1-5), N.M.S.A., 1953 Comp., 1969 Supp.