



# STATE OF NEW MEXICO

## GOVERNOR'S COMMISSION ON DISABILITY



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Senator Mark Boitano  
State of New Mexico  
State Capitol, Room 415-B  
Santa Fe, New Mexico 87501

### **RE: State Use Act Recommendations from State Use Act Task Force**

Senator Boitano:

The Governor's Commission on Disability convened a six-member Task Force to review and make State Use Act (SUA) recommendations for Legislative and/or Executive action as directed in your March 17, 2011 letter to Governor Susana Martinez.

The Task Force consisted of: two individuals with small businesses, John Haaland and Carlo Lucero, both of Albuquerque; two SUA contractors, Marcie Davis of Santa Fe and Shannon Smith of Albuquerque; and Jim Jackson of Albuquerque and Andy Winnegar of Santa Fe. The Task Force met five times. There was broad participation in the Task Force meetings from the non-profit and for-profit sectors and government.

The Task Force made the following Recommendations:

**1. The role played by a contract set-aside program for persons with disabilities, and the populations for whom such programs may be needed to provide work opportunities.**

- a. Require all SUA contractors to pay at least the New Mexico minimum wage for all labor performed on SUA contracts, regardless of whether the contractor is authorized to pay less than the minimum wage under federal law.**

**Shannon Smith-** Require all SUA contractors to comply with the NM minimum wage law with respect to SUA contracts.

- b. Clearly define "integrated employment" and assure that work performed pursuant to SUA contracts meets the requirement for integrated employment.**

**Shannon Smith-** Provide language to the State Purchasing Council from Persons with Disabilities to amend to the State Rule to ensure integrated work opportunities are provided.

- c. There should be periodic reviews for compliance with these and all other SUA requirements.**

**Shannon Smith-** Authorize the State Purchasing Office to verify that individuals, businesses or agencies that receive contracts under the SUA meet the requirements of the SUA.

- d. **Job opportunities under the SUA should be advertised by employers receiving SUA contracts. This may assist with employment of the most qualified individuals with disabilities for SUA job opportunities.**

**Jim Jackson-** Note: I agree with requiring advertising but only if the contractor will be hiring additional people to carry out the work. If the contractor already has the employees needed, why advertise?

**Comment (Andy Winnegar):** All of the above requirements can be achieved through State Rule changes. The purpose of the State Use Act [13-1C-1 NMSA 1978] is to encourage and assist persons with disabilities to achieve maximum personal independence through useful and productive employment by ensuring an expanded and constant market for services delivered by persons with disabilities, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and entitlements (underlined for emphasis).

2. **Alternative mechanisms for promoting state contracts with persons with disabilities, such as providing preferences in procurements similar to those provided to woman-owned or veteran-owned bidders rather than an absolute set-aside through a right of first refusal.**

- a. **Establish New Mexico Civil Rights Legislation similar to Section 503 of the Rehabilitation Act to prohibit employment discrimination based on disability and requires affirmative action in the hiring, placement and advancement of people with disabilities contracting with New Mexico public agencies.**

**Jim Jackson-** Note: The NM Human Rights Act already prohibits employment discrimination but the requirement for affirmative action could be quite helpful.

**Comment (Andy Winnegar):** In our recent task force discussions when a janitorial company owner was asked if he would hire people with disabilities. He responded "no I don't have the time to train them." Qualified individuals with disabilities may not need any special training to perform a job, yet there are still business owners that have negative stereotypes of people with disabilities. This attitude was also recently documented in a survey of hiring managers Chan, 2010 (<http://www.ncbi.nlm.nih.gov/pubmed/20602153>).

- b. **Put the State Purchasing Office in charge of this program. A state program that directly affects virtually all State agencies should be operated and overseen by the State and should be under the control of the Governor. Maintain the State Purchasing Council from Persons with Disabilities Council (Council), but staff the Council with State and Local Public Body employees.**

3. **Ways to minimize the impact of the act, or alternatives to the act, on private businesses seeking the opportunity to bid on State or local governmental procurements, and on State agencies needing to move through the procurement process expeditiously.**

- b. **All public contracts that are considered for approval by the State Purchasing Council should be advertised in a statewide newspaper per the Open Meetings Act.**

**Comment** (Andy Winnegar): There was no evidence provided to the task force of any business hurt by the SUA. The only industry reviewed by the task force was custodial or janitorial businesses. The two public contractors never provided any documentation of any adverse impact to their businesses. If there were a price dispute the State Purchasing Council from Persons with disabilities has the authority to address the complaint (State Rule 2.40.5.1.4-B). [http://nmabilities.org/NMAbilities/PoliciesAndProcedures/Docs/State\\_Use\\_Act\\_Rule.pdf](http://nmabilities.org/NMAbilities/PoliciesAndProcedures/Docs/State_Use_Act_Rule.pdf). However businesses need to be notified that a contract may be considered under the SUA prior to the contract approval by the State Purchasing Council. This may provide small business an opportunity to present information regarding fair market price or potential harm to their businesses.

4. **Other affirmative steps could be requested or required of State agencies and local governments to increase the number or size of contracts for services awarded to persons with disabilities, or businesses that hire persons with disabilities, such as annually reviewed targets for the number or percentage of such contracts.**

- a. The Council should regularly review public contractors and contracted services for compliance with the Act. (The Council verifies public contractors direct labor ratios, service contract integration and fair pay for employees. The Council develops an adverse impact statement for business and government.)

#### **Other Recommendations**

- **Require all SUA contractors to comply with the provisions of the Americans with Disabilities Act (ADA), including physical accessibility and provision of accommodations in employment such as interpreters for persons who are deaf.**

**Comment** (Andy Winnegar): Under Title 1 of the ADA "employer" is a person engaged in an industry affecting commerce that has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person. I would suggest that a NM Rule change wave the number of employee requirements for SUA contractors so that all SUA contractors are required to comply with the ADA. Also, it appeared from the task force discussions that only one of the SUA contractors was paying subminimum wages FLSA [Section 14 (c)]. Reasonable accommodations for qualified individuals with disabilities may be provided to increase productivity. The EEOC has a fact sheet on accommodations to increase performance (<http://www.eeoc.gov/facts/performance-conduct.html#perf>).

- **All SUA contractors be removed from the Council.**  
**Jim Jackson-** Alternate wording: Prohibit contractors from serving on the Council

For Barrier Free Futures,

Jim Parker  
Director

