SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 53

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO PROCUREMENT; CREATING PREFERENCES AND CERTIFICATION
REQUIREMENTS FOR RESIDENT MINORITY AND RESIDENT TRIBAL
BUSINESSES AND RESIDENT MINORITY AND RESIDENT TRIBAL
CONTRACTORS; RETAINING THE RESIDENT VETERAN BUSINESS
PREFERENCE; AUTHORIZING PROCUREMENTS FOR EXCLUSIVE BIDDING BY
NEW MEXICO BUSINESSES OR SMALL BUSINESSES; ADDING AND REVISING
DEFINITIONS IN THE PROCUREMENT CODE; SPECIFYING THE PERIOD FOR
WHICH BIDS AND PROPOSALS ARE TO REMAIN CONFIDENTIAL; CLARIFYING
ELECTRONIC SUBMISSION REQUIREMENTS; ALLOWING VIRTUAL BID
OPENINGS; REVISING CHIEF PROCUREMENT OFFICER REGISTRATION
REQUIREMENTS; CLARIFYING REPORTING REQUIREMENTS FOR IN-STATE
AND OUT-OF-STATE CONTRACTS; APPLYING THE PROCUREMENT CODE TO
MARKETING; ALLOWING THE REJECTION OF IDENTICAL LOW BIDS BASED
ON THE APPEARANCE OF NON-INDEPENDENT BIDDING; SPECIFYING
POSTING REQUIREMENTS FOR EMERGENCY PROCUREMENT; PRESCRIBING

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STBTC/SB 53

REQUIREMENTS FOR PURCHASES OF SUSTAINABLE AND RECYCLED CONTENT GOODS; AUTHORIZING AUDITS RELATED TO SALES UNDER A CONTRACT; DEFINING OFFERORS FOR PURPOSES OF PROTESTING AN AWARD; REQUIRING REPORTING ON CONTRACTS AWARDED TO NEW MEXICO BUSINESSES; ALLOWING THE PURCHASE OF ELECTRIC, PLUG-IN HYBRID ELECTRIC AND GAS-ELECTRIC HYBRID VEHICLES MADE OUTSIDE NORTH AMERICA; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; REPEALING LAWS 2012, CHAPTER 56, SECTION 4 AND LAWS 2015, CHAPTER 73, SECTION 25.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 13-1-21 NMSA 1978 (being Laws 1979, Chapter 72, Section 1, as amended) is amended to read:

"13-1-21. APPLICATION OF PREFERENCES.--

A. For the purposes of this section:

(1) "bid" means a submission by a prospective supplier in response to a solicitation involving a formal bid process, where all bids are submitted wholly independent of each other in a competitive manner;

(2) "business" means a commercial enterprise carried on for the purpose of selling goods or services, including growing, producing, processing or distributing agricultural products;

(3) "formal bid process" means a competitive bid process;
"formal request for proposals" means a competitive proposal process, including a
competitive qualifications-based proposal process;

"public body" means a department,
commission, council, board, committee, institution, legislative
body, agency, government corporation, educational institution
or official of the executive, legislative or judicial branch of
the government of the state or a political subdivision of the
state and the agencies, instrumentalities and institutions
thereof, including two-year post-secondary educational
institutions, school districts, local school boards and all
municipalities, including home-rule municipalities;

"recycled content goods" means
supplies and materials composed twenty-five percent or more of
recycled materials or sustainable materials, as determined by
the general services department; provided that the recycled
materials or sustainable materials content meets or exceeds the
minimum content standards required by bid specifications;

"resident business" means a business
that has a valid resident business certificate issued by the
taxation and revenue department pursuant to Section 13-1-22
NMSA 1978 but does not include a resident veteran business
and resident minority business or resident tribal business;

"resident minority business" means a business that has a valid resident minority business
certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978:

(9) "resident tribal business" means a business that has a valid resident tribal business certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978; and

(10) "resident veteran business" means a business that has a valid resident veteran business certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978.

B. Except as provided in Subsection C of this section, when a public body makes a purchase using a formal bid process, the public body shall deem a bid submitted by a resident business to be five percent lower than the bid actually submitted; or

(2) resident business, resident minority business, resident tribal business or resident veteran business with annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year to be favored with a ten percent preference over the bid actually submitted.

C. When a public body makes a purchase using a formal bid process and the bids are received for both recycled content goods and nonrecycled content goods, the public body shall deem bids submitted for recycled content goods from
any business [except a resident veteran business] to be [five] favored with a ten percent [lower than] preference over the bids actually submitted [or]

(2) bids submitted for recycled content goods from a resident veteran business with annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year to be ten percent lower than the bids actually submitted].

D. When a public body makes a purchase using a formal request for proposals process, not including contracts awarded on a point-based system, the public body shall award an additional [(1) five percent of the total weight of all the factors used in evaluating the proposals to a resident business; and

(2) ten percent of the total weight of all the factors used in evaluating the proposals to a resident business, resident minority business, resident tribal business or resident veteran business [that has annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year].

E. When a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award additional points equivalent to [(1) five percent of the total possible points to a resident business; or

(2) ten percent of the total possible points
to a resident business, resident minority business, resident tribal business or resident veteran business [that has annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year].

F. When a joint bid or joint proposal is submitted by a combination of resident veteran, resident or nonresident, resident minority or resident tribal businesses, the preference provided pursuant to Subsection B, C, D or E of this section shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each business as specified in the joint bid or proposal.

[G. A resident veteran business shall not benefit from the preference pursuant to this section for more than ten consecutive years. A person that is an owner of a business that is a resident veteran business shall not benefit from the preference pursuant to this section for more than ten consecutive years. A person shall not benefit from the provisions of this section based on more than one business concurrently.

H. A public body shall not award a business [both a resident business preference and a resident veteran business preference] more than one preference pursuant to this section.

[I. H. The procedures provided in Sections .219636.2]
13-1-172 through 13-1-183 NMSA 1978 or in an applicable purchasing ordinance apply to a protest to a public body concerning the awarding of a contract in violation of this section.

This section shall not apply when the expenditure includes federal funds for a specific purchase."

SECTION 2. Section 13-1-22 NMSA 1978 (being Laws 1969, Chapter 184, Section 1, as amended) is amended to read:

"13-1-22. [RESIDENT BUSINESS, RESIDENT VETERAN BUSINESS, RESIDENT CONTRACTOR AND RESIDENT VETERAN CONTRACTOR CERTIFICATIONS FOR PREFERENCES.--

A. To receive a resident business, [or] resident veteran business, resident minority business or resident tribal business preference pursuant to Section 13-1-21 NMSA 1978 or a resident contractor, [or] resident veteran contractor, resident minority contractor or resident tribal contractor preference pursuant to Section 13-4-2 NMSA 1978, a business or contractor shall submit with its bid or proposal a copy of [a valid resident business certificate, valid resident veteran business certificate, valid resident contractor certificate, or valid resident veteran contractor] the certificate issued by the taxation and revenue department to the business or contractor pursuant to this section.

B. To qualify for a certification pursuant to this section, the gross revenues of the applicant business or 

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contractor in the preceding tax year shall not exceed three million five hundred thousand dollars ($3,500,000). Every two years, the taxation and revenue department shall adjust the gross revenues required by this subsection in accordance with the percentage of the preceding two calendar years' increase of the consumer price index for all urban consumers, United States city average for all items, published by the United States department of labor, and shall publish the increased amounts on its website.

[B-] C. An application for a resident business certificate shall include an affidavit [from a certified public accountant] providing the previous year's gross revenues for the business and setting forth that the business is licensed to do business in this state and that:

1. the business has paid property taxes or rent on real property in the state and paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit;

2. if the business is a new business, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit and has not applied for a resident business or resident contractor certificate pursuant to this section during that time period;
(3) if the business is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the business either leased real property for ten years or purchased real property greater than one hundred thousand dollars ($100,000) in value in the state; or

(4) if the business is a previously certified business or was eligible for certification, the business has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same commercial enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

[6:] D. An application for a resident veteran business certificate shall include the affidavit required by Subsection [B] C of this section [an affidavit from a certified public accountant providing the previous year's annual revenues of the resident veteran business] and:

(1) verification by the federal department of veterans affairs as being either a veteran-owned small business or a service-disabled veteran-owned small business; or

(2) verification of veteran status as
indicated by the United States department of defense DD form 214 of release or discharge from active duty with an honorable discharge or of service-disabled veteran status by the department of veterans affairs and proof that a veteran or veterans own a majority of the business.

E. An application for a resident minority business certificate shall include:

(1) the affidavit required by Subsection C of this section; and

(2) verification that more than fifty percent of the business is owned by women or persons who are African American or Black, Latino or Hispanic, Asian, Pacific Islander, Native American or Alaska native. The requirements of this paragraph may be satisfied by submitting verification of women-owned or minority-owned business status by an agency of the United States government or a national certifying entity approved by an agency of the United States government or by submitting other evidence of women-owned or minority-owned business status as established by the taxation and revenue department in rule.

F. An application for a resident tribal business certificate shall include:

(1) an affidavit providing the previous year's gross revenues for the business and setting forth that the business's principal place of business is on tribal land within .219636.2
the boundaries of New Mexico; and

(2) verification, as prescribed by rule of the taxation and revenue department, that:

(a) the business is wholly owned by a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico, including a political subdivision, agency or department of the Indian nation, tribe or pueblo;

(b) the business is an incorporated or unincorporated enterprise of a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico;

(c) more than fifty percent of the business is owned by persons who are enrolled members of a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico; or

(d) the business is a corporation considered to be an Indian nation, tribe or pueblo, located wholly or partially in New Mexico, by the federal government or the state.

[D-r] G. An application for a resident contractor certificate shall include an affidavit [from a certified public accountant] providing the previous year's annual revenues for the contractor and setting forth that the contractor is currently licensed as a contractor in this state and that:
(1) the contractor has:
(a) registered with the state at least one vehicle; and
(b) in each of the five years immediately preceding the submission of the affidavit: 1) paid property taxes or rent on real property in the state and paid at least one other tax administered by the state; and 2) paid unemployment insurance on at least three full-time employees who are residents of the state; provided that if a contractor is a legacy contractor, the requirement of at least three full-time employees who are residents of the state is waived;

(2) if the contractor is a new contractor, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the five years immediately preceding the submission of the affidavit and has not applied for a resident business or resident contractor certificate pursuant to this section during that time period;

(3) if the contractor is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the contractor either leased real property for ten years or purchased real property greater than one hundred thousand dollars ($100,000) in value in the state;
or

(4) if the contractor is a previously certified contractor or was eligible for certification, the contractor has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

[Eπ] H. An application for a resident veteran contractor certificate shall include the affidavit required by Subsection [D] G of this section [an affidavit from a certified public accountant providing the previous year's annual revenues for the resident veteran contractor] and:

(1) verification by the federal department of veterans affairs as being either a veteran-owned small business or a service-disabled veteran-owned small business; or

(2) verification of veteran status as indicated by the United States department of defense DD form 214 of release or discharge from active duty with an honorable discharge or of service-disabled veteran status by the department of veterans affairs and proof that a veteran or veterans own a majority of the business.

I. An application for a resident minority contractor certificate shall include:

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(1) the affidavit required by Subsection G of this section; and

(2) verification that more than fifty percent of the business is owned by women or persons who are African American or Black, Latino or Hispanic, Asian, Pacific Islander, Native American or Alaska native. The requirements of this paragraph may be satisfied by submitting verification of women-owned or minority-owned business status by an agency of the United States government or a national certifying entity approved by an agency of the United States government or by submitting other evidence of women-owned or minority-owned business status as established by the taxation and revenue department in rule.

J. An application for a resident tribal contractor certificate shall include:

(1) an affidavit providing the previous year's gross revenues for the contractor and setting forth that:

(a) the contractor is currently licensed as a contractor in this state;

(b) the contractor has registered with the state at least one vehicle; and

(c) the contractor's principal place of business is on tribal land within the boundaries of New Mexico; and

(2) verification, as prescribed by rule of the
taxation and revenue department, that:

(a) the business is wholly owned by a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico, including a political subdivision, agency or department of the Indian nation, tribe or pueblo;

(b) the business is an incorporated or unincorporated enterprise of a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico;

(c) more than fifty percent of the business is owned by persons who are enrolled members of a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico; or

(d) the business is a corporation considered to be an Indian nation, tribe or pueblo, located wholly or partially in New Mexico, by the federal government or the state.

[F-T] K. The taxation and revenue department shall prescribe the form and content of an application for certification and required affidavit. The taxation and revenue department shall examine the application and affidavit and, if necessary, may seek additional information to ensure that the business or contractor is eligible to receive the certificate pursuant to the provisions of this section. If the taxation
and revenue department determines that an applicant is
eligible, the department shall issue a certificate pursuant to
the provisions of this section. If the taxation and revenue
department determines that the applicant is not eligible and
denies the application, the department shall issue notification
of the denial, including the reasons for the denial, within
thirty days. If no notification is provided by the department,
the certificate is deemed approved. A certificate is valid for
three years from the date of its issuance; provided that if
there is a change of ownership of more than fifty percent, a
resident business [resident veteran business, resident
contractor, or resident veteran] or contractor shall reapply
for a certificate.

[6. A business or contractor whose application for
a certificate is denied has fifteen days from the date of the
taxation and revenue department's decision to file an objection
with the taxation and revenue department. The person filing
the objection shall submit evidence to support the objection.
The taxation and revenue department shall review the evidence
and issue a decision within fifteen days of the filing of the
objection.]

L. A business or contractor whose application for a
certificate is denied may protest the denial by filing a
petition with the administrative hearings office. A person
that files a petition pursuant to this subsection shall be
entitled to a hearing on the applicant's protest. A petition shall:

(1) be filed no later than ninety days after the taxation and revenue department notifies the applicant that the application for certification has been denied;

(2) state the applicant's name and address;

(3) state why the applicant believes the denial of the application for certification is incorrect, and why the applicant believes the application for certification should have been approved; and

(4) contain other information as the administrative hearings office may require by rule.

[H.] M. If, following a hearing and an opportunity to be heard, the administrative hearings office finds that a business or contractor provided false information to the taxation and revenue department in order to obtain a certificate pursuant to this section or that a business or contractor used a certificate to obtain a [resident business, resident veteran business, resident contractor or resident veteran contractor] preference for a bid or proposal and the [resident business, resident veteran business, resident contractor or resident veteran] business or contractor did not perform the percentage of the contract specified in the bid or proposal, the business or contractor:

(1) is not eligible to receive a certificate

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or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA 1978
for a period of five years from the date on which the taxation
and revenue department became aware of the submission of the
false information or the failure to perform the contract as
specified in the bid or proposal; and

(2) is subject to an administrative penalty of
up to fifty thousand dollars ($50,000) for each violation.

[I.] N. In a decision issued pursuant to Subsection
[G or H] L or M of this section, the [taxation and revenue
department or] administrative hearings office shall state the
reasons for the action taken and inform an aggrieved business
or contractor of the right to judicial review of the
determination pursuant to the provisions of Section 39-3-1.1
NMSA 1978.

[J.] O. The taxation and revenue department may
assess a reasonable fee for the issuance of a certificate not
to exceed the actual cost of administering the taxation and
revenue department's duties pursuant to this section.

[K.] P. The state auditor may audit or review the
issuance or validity of certificates.

[L.] Q. For purposes of this section:

(1) "new business" means a person that did not
exist as a business in any form and that has been in existence
for less than three years;

(2) "new contractor" means a person that did
not exist as a business in any form and that has been in existence for less than five years;

(3) "legacy contractor" means a construction business that has been licensed in this state for ten consecutive years; and

(4) "relocated business" means a business that moved eighty percent of its total domestic personnel from another state to New Mexico in the past five years."

SECTION 3. A new section of the Procurement Code is enacted to read:

"[NEW MATERIAL] NEW MEXICO BUSINESSES--EXCLUSIVE PROCUREMENTS AUTHORIZED.--The state purchasing agent or a central purchasing office may design procurements to exclusively receive proposals, bids or responses from New Mexico businesses; provided that this section shall not apply to procurements using federal or private funds."

SECTION 4. A new section of the Procurement Code is enacted to read:

"[NEW MATERIAL] DEFINITION--ADVERTISING.--"Advertising" means the promotion of a product or service through paid media and does not include marketing."

SECTION 5. A new section of the Procurement Code is enacted to read:

"[NEW MATERIAL] DEFINITION--EVALUATION FACTORS.--"Evaluation factors" means the factors stated in the request
for proposals that are used by evaluators to determine which competing proposal is most advantageous to the procuring state agency or local public body."

SECTION 6. A new section of the Procurement Code is enacted to read:

"[NEW MATERIAL] DEFINITION--MARKETING.--"Marketing" means the process of identifying public needs or desires and determining how best to meet those needs or desires, including any element of the process such as creation, research, design, planning or data mining."

SECTION 7. Section 13-1-37 NMSA 1978 (being Laws 1984, Chapter 65, Section 10, as amended) is amended to read:

"13-1-37. DEFINITION--CENTRAL PURCHASING OFFICE.--"Central purchasing office" means that office, entity, bureau or purchasing staff within a state agency or a local public body responsible for the control of procurement of items of tangible personal property, professional services, general services or construction ["Central purchasing office"] and includes the purchasing division of the general services department."

SECTION 8. Section 13-1-88 NMSA 1978 (being Laws 1984, Chapter 65, Section 61) is amended to read:

"13-1-88. DEFINITION--SMALL BUSINESS.--"Small business" means a business, not a subsidiary or division of another business, having an average annual [volume] gross revenue for .219636.2
the preceding three fiscal years [which] that does not exceed [one million five hundred thousand dollars ($1,500,000)] three million five hundred thousand dollars ($3,500,000), increased every two years by the taxation and revenue department by the percentage of the preceding two calendar years' increase of the consumer price index for all urban consumers, United States city average for all items, published by the United States department of labor."

SECTION 9. Section 13-1-95.1 NMSA 1978 (being Laws 2001, Chapter 292, Section 7, as amended) is amended to read:

"13-1-95.1. ELECTRONIC TRANSMISSIONS.--

A. The state purchasing agent shall develop guidelines for central purchasing offices to use electronic media, including distribution of solicitations and acceptance of sealed bids and competitive sealed proposals that include electronic signatures. The guidelines shall include:

(1) appropriate security to prevent unauthorized access to electronically submitted bids or proposals prior to the date and time set for opening of bids or the deadline set for receipt for proposals, including the electronic bidding, approval and award process; and

(2) accurate retrieval or conversion of electronic forms of information into a medium that permits inspection and copying.

B. A central purchasing office, in an invitation
for bids or a request for proposals, may require all or any
part of a sealed bid or a competitive sealed proposal to be
submitted electronically if the office determines that an
electronic submission will be advantageous to the procurement
process. If electronic submission is required:

(1) no hard copy documentation shall be
submitted to the central purchasing office prior to the award
of the contract, except as specifically identified in the
invitation for bids or the request for proposals;

(2) the invitation for bids or request for
proposals shall specify an opening date and time, a fixed
closing date and time and [an email account or other] a secure
electronic location to which the electronic bid or proposal
shall be submitted; provided that the process of uploading and
submitting the electronic bid or proposal shall be completed in
full no later than the fixed closing date and time;

(3) sealed bids submitted electronically shall
be opened publicly in the presence of one or more witnesses at
the time and place designated in the invitation for bids,
including virtual openings conducted by video conferencing.
The amount of each bid and each bid item, if appropriate, and
such other relevant information as may be specified by the
state purchasing agent or a central purchasing office, together
with the name of each bidder, shall be recorded, and the record
and each bid shall be open to public inspection; and
(4) for sealed proposals, the proposals shall be opened, evaluated and the contract awarded as required in the request for proposals and as otherwise provided in the Procurement Code."

SECTION 10. Section 13-1-95.2 NMSA 1978 (being Laws 2013, Chapter 70, Section 3) is amended to read:

"13-1-95.2. CHIEF PROCUREMENT OFFICERS--REPORTING REQUIREMENT--TRAINING--CERTIFICATION.--

A. [On or before January 1 of each year beginning in 2014, and every time] When a chief procurement officer is hired, each state agency and local public body shall provide to the state purchasing agent the name of the state agency's or local public body's chief procurement officer and information identifying the state agency's or local public body's central purchasing office, if applicable, and shall register the chief procurement officer on the purchasing division website along with updated information, as needed. Corrective action to update information, registration and replacement of chief procurement officers is the responsibility of each state agency and local public body.

B. The state purchasing agent shall maintain a list of the names of the chief procurement officers reported to the state purchasing agent by state agencies and local public bodies. The state purchasing agent shall make the list of chief procurement officers available to the public through the
[website] website of the purchasing division of the general services department and in any other appropriate form.

C. The state purchasing agent shall offer a certification training program for chief procurement officers each year.

D. On or before January 1, 2015, the state purchasing agent shall establish a certification program for chief procurement officers that includes initial certification and recertification every two years for all chief procurement officers. In order to be recertified, a chief procurement officer shall pass a recertification examination approved by the secretary of general services.

E. On and after July 1, 2015, only certified chief procurement officers may do the following, except that persons using procurement cards may continue to issue purchase orders and authorize small purchases:

   (1) make determinations, including determinations regarding exemptions, pursuant to the Procurement Code;

   (2) issue purchase orders and authorize small purchases pursuant to the Procurement Code; and

   (3) approve procurement pursuant to the Procurement Code."

SECTION 11. Section 13-1-95.3 NMSA 1978 (being Laws 2019, Chapter 153, Section 1) is amended to read:

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"13-1-95.3. STATE AGENCY--REPORTING REQUIRED--IN-STATE AND OUT-OF-STATE CONTRACTS.--All state agencies shall report annually to the purchasing division of the general services department [information on] the total number and corresponding total dollar amount of state agency contracts awarded to in-state contractors and the total number and corresponding total dollar amount of state agency contracts awarded to out-of-state contractors. As used in this section, "contracts" does not include purchase orders."

SECTION 12. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended by Laws 2019, Chapter 48, Section 13 and by Laws 2019, Chapter 63, Section 1) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or services for the governor's mansion and grounds;

C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal .219636.2
courts;

D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

E. purchases of books, periodicals and training materials in printed or electronic format from the publishers or copyright holders thereof and purchases of print, digital or electronic format library materials by public, school and state libraries for access by the public;

F. travel or shipping by common carrier or by private conveyance or to meals and lodging;

G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to rules adopted by the corrections industries commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

J. purchases not exceeding ten thousand dollars ($10,000) consisting of magazine subscriptions, web-based or
electronic subscriptions, conference registration fees and
other similar purchases where prepayments are required;

K. municipalities having adopted home rule charters
and having enacted their own purchasing ordinances;

L. the issuance, sale and delivery of public
securities pursuant to the applicable authorizing statute, with
the exception of bond attorneys and general financial
consultants;

M. contracts entered into by a local public body
with a private independent contractor for the operation, or
provision and operation, of a jail pursuant to Sections 33-3-26
and 33-3-27 NMSA 1978;

N. contracts for maintenance of grounds and
facilities at highway rest stops and other employment
opportunities, excluding those intended for the direct care and
support of persons with handicaps, entered into by state
agencies with private, nonprofit, independent contractors who
provide services to persons with handicaps;

O. contracts and expenditures for services or items
of tangible personal property to be paid or compensated by
money or other property transferred to New Mexico law
enforcement agencies by the United States department of justice
drug enforcement administration;

P. contracts for retirement and other benefits
pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;
Q. contracts with professional entertainers;
R. contracts and expenditures for legal subscription and research services and litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;
S. contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;
T. works of art for museums or for display in public buildings or places;
U. contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;
V. purchases of advertising in all media, including radio, television, print and electronic. The Procurement Code
shall apply to marketing:

W. purchases of promotional goods intended for resale by the tourism department;

X. procurement of printing, publishing and distribution services for materials produced and intended for resale by the cultural affairs department;

Y. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars ($200,000);

Z. procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act;

AA. purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973;

BB. procurement, by either the department of health or Grant county or both, of tangible personal property, services or construction that are exempt from the Procurement
Code pursuant to Section 9-7-6.5 NMSA 1978;

    CC. contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act;

    DD. the purchase for resale by the state fair commission of feed and other items necessary for the upkeep of livestock;

    EE. contracts entered into by the crime victims reparation commission to distribute federal grants to assist victims of crime, including grants from the federal Victims of Crime Act of 1984 and the federal Violence Against Women Act of 1994;

    FF. procurement by or through the early childhood education and care department of early pre-kindergarten and pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act;

    GG. procurement of services of commissioned advertising sales representatives for New Mexico magazine; and

    HH. procurements exempt from the Procurement Code as otherwise provided by law."

SECTION 13. A new Section 13-1-105.1 NMSA 1978 is enacted to read:

"13-1-105.1. [NEW MATERIAL] COMPETITIVE SEALED
BIDS--DISCLOSURE.--The contents of any bid shall not be disclosed after the submission of the bid and before the bid is opened pursuant to Section 13-1-107 NMSA 1978."

SECTION 14. Section 13-1-110 NMSA 1978 (being Laws 1984, Chapter 65, Section 83) is amended to read:

"13-1-110. COMPETITIVE SEALED BIDS--IDENTICAL BIDS.--When competitive sealed bids are used and two or more of the bids submitted are identical in price and are the low bid, the state purchasing agent or a central purchasing office may:

A. award pursuant to the multiple source award provisions of Sections [126 and 127 of the Procurement Code] 13-1-153 and 13-1-154 NMSA 1978;

B. award to a resident business if the identical low bids are submitted by a resident business and a nonresident business;

C. award to a resident manufacturer if the identical low bids are submitted by a resident manufacturer and a resident business;

D. award by lottery to one of the identical low bidders; [or]

E. reject the identical low bids if the bids are submitted by separately registered bidders that have the same physical address, shared operations or shared ownership; or

[E-] F. reject all bids and resolicit bids or proposals for the required services, construction or items of...
tangible personal property."

SECTION 15. Section 13-1-116 NMSA 1978 (being Laws 1984, Chapter 65, Section 89) is amended to read:

"13-1-116. COMPETITIVE SEALED PROPOSALS--DISCLOSURE [RECORD].--The contents of any proposal shall not be disclosed [so as to be available to competing offerors during the negotiation process] after the submission of the proposal and before the final execution of all awarded contracts."

SECTION 16. Section 13-1-127 NMSA 1978 (being Laws 2019, Chapter 153, Section 5) is amended to read:

"13-1-127. EMERGENCY PROCUREMENT--REQUIRED CONDITIONS--LIMITATIONS--NOTICE.--

A. The state purchasing agent or a central purchasing office may only make an emergency procurement when the service, construction or item of tangible personal property procured:

(1) is needed immediately to:

(a) control a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event; or

(b) plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event; and
(2) cannot be acquired through normal procurement methods.

B. The state purchasing agent or a central purchasing office:

(1) in making an emergency procurement, shall:

(a) employ a competitive process to the extent practicable under the circumstances; and

(b) use due diligence in determining the basis for the procurement and in selecting a contractor; and

(2) shall not make an emergency procurement for the purchase or lease of heavy road equipment.

C. The state purchasing agent or a central purchasing office that makes an emergency procurement shall outline its determination of the basis for the procurement and its selection of the contractor in writing and include the writing in the procurement file. Promptly thereafter:

(1) the central purchasing office shall post notice of the procurement, [on its website; or] including the name of the vendor and the contract amount, to the sunshine portal; and

(2) the central purchasing office shall post notice of the procurement on its website, if it maintains one [and shall transmit the notice to the state purchasing agent for posting on the state purchasing agent's website].

D. The state purchasing agent or a central purchasing office...
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purchasing office that makes an emergency procurement to plan
or prepare for the response to a serious threat to public
health, welfare, safety or property caused by a flood, fire,
epidemic, riot, act of terrorism, equipment failure or similar
event shall account for the money spent in making the
procurement and report on that accounting to the legislative
finance committee and the department of finance and
administration within sixty days after the end of the fiscal
year in which the procurement was made."

SECTION 17. Section 13-1-135.1 NMSA 1978 (being Laws
1995, Chapter 60, Section 2) is amended to read:

"13-1-135.1. SUSTAINABLE AND RECYCLED CONTENT
GOODS--COOPERATIVE PROCUREMENT.--

A. [Beginning July 1, 1995, each] A central
purchasing office shall [whenever its price, quality, quantity,
availability and delivery requirements are met] purchase
sustainable and recycled content goods through contracts
established by the purchasing division of the general services
department or with other central purchasing offices whenever
its quality, quantity, availability and delivery requirements
are met and the cost of the sustainable and recycled content
goods is no more than ten percent higher than the cost of
comparable conventional goods.

B. A central purchasing office may negotiate
contracts and design procurements to exclusively purchase

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sustainable goods and recycled content goods.

[B-] C. For purposes of this section:

(1) "recycled content goods" means supplies and materials composed in whole or in part of recycled materials; [provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications] and

(2) "sustainable goods" means supplies and materials that are ecologically friendly or otherwise have a reduced carbon footprint in their use or manufacture, as established by the state purchasing agent."

SECTION 18. Section 13-1-160 NMSA 1978 (being Laws 1984, Chapter 65, Section 133) is amended to read:

"13-1-160. AUDIT OF COST OR PRICING DATA.--A state agency or a local public body may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data, to the extent that [such] the books and records relate to [such] the cost or pricing data, and may audit the books and records related to sales for which a payment of fees is required under a contract. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain books and records that relate to [such] the cost or pricing data for three years from the date of final payment under the contract unless a shorter period is otherwise authorized in writing."
SECTION 19. Section 13-1-174 NMSA 1978 (being Laws 1984, Chapter 65, Section 147, as amended) is amended to read:

"13-1-174. AUTHORITY TO RESOLVE PROTESTS.--The state purchasing agent, a central purchasing office or a designee of either shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved bidder or offeror. This authority shall be exercised in accordance with [regulations] rules promulgated by the secretary, a local public body or a central purchasing office [which] that has the authority to issue [regulations] rules but shall not include the authority to award money damages or [attorney fees. An entity unsuccessful in submitting a bid or offer is deemed not a bidder nor offeror under this section and has no right to protest."

SECTION 20. Section 13-1-184 NMSA 1978 (being Laws 1984, Chapter 65, Section 157) is amended to read:

"13-1-184. ASSISTANCE TO SMALL BUSINESS--POLICY--EXCLUSIVE PROCUREMENTS AUTHORIZED.--

A. It shall be the policy of this state to encourage small businesses to do business with state agencies and local public bodies.

B. The state purchasing agent or a central purchasing office may design procurements to exclusively receive proposals, bids or responses from small businesses."

SECTION 21. Section 13-1-187 NMSA 1978 (being Laws 1984, .219636.2
Chapter 65, Section 160) is amended to read:

"13-1-187. SMALL BUSINESS--NEW MEXICO BUSINESS--REPORT TO THE LEGISLATURE.--The state purchasing agent shall annually, before January 1, report in writing to the legislature concerning the awarding of state contracts to small businesses and New Mexico businesses during the preceding fiscal year."

SECTION 22. Section 13-1-188 NMSA 1978 (being Laws 1984, Chapter 65, Section 161, as amended) is amended to read:

"13-1-188. PUBLIC ACQUISITION OF AMERICAN-MADE MOTOR VEHICLES REQUIRED.--A state agency shall only acquire motor vehicles assembled in North America except for electric vehicles, plug-in hybrid vehicles or gas-electric hybrid vehicles [until these vehicles are assembled in North America]; provided that this section shall not apply to motor vehicles used for law enforcement purposes. For the purposes of this section, "motor vehicle" means a light-duty vehicle under eight thousand five hundred pounds."

SECTION 23. Section 13-4-2 NMSA 1978 (being Laws 1984, Chapter 66, Section 2, as amended) is amended to read:

"13-4-2. APPLICATION OF PREFERENCE.--

A. For the purposes of this section:

(1) "formal bid process" means a competitive sealed bid process;

(2) "formal request for proposals process" means a competitive sealed proposal process, including a
competitive sealed qualifications-based proposal process;

(3) "public body" means a department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of the state or a political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts, local school boards and all municipalities, including home-rule municipalities;

(4) "public works contract" means a contract for construction, construction management, architectural, landscape architectural, engineering, surveying or interior design services;

(5) "resident contractor" means a person that has a valid resident contractor certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978 but does not include a resident veteran contractor, resident minority contractor or resident tribal contractor;

(6) "resident minority contractor" means a person that has a valid resident minority contractor certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978;

(7) "resident tribal contractor" means a
person that has a valid resident tribal contractor certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978; and

[(6)] (8) "resident veteran contractor" means a person that has a valid resident veteran contractor certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978.

B. For the purpose of awarding a public works contract using a formal bid process, a public body shall deem a bid submitted by a

[(1)] resident contractor to be five percent lower than the bid actually submitted; or

[(2)] resident contractor, resident minority contractor, resident tribal contractor or resident veteran contractor [with annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year] to be ten percent lower than the bid actually submitted.

C. When a public body awards a contract using a formal request for proposals process, not including contracts awarded on a point-based system, the public body shall award an additional

[(1)] five percent of the total weight of all the factors used in evaluating the proposals to a resident contractor; or

[(2)] ten percent of the total weight of all the
factors used in evaluating the proposals to a resident contractor, resident minority contractor, resident tribal contractor or resident veteran contractor [that has annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year].

D. When a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award an additional of the equivalent of

\[(1) \text{ five percent of the total possible points to a resident contractor; or} \]

\[(2) \text{ ten percent of the total possible points to a resident contractor, resident minority contractor, resident tribal contractor or resident veteran contractor [that has annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year].} \]

E. When a joint bid or joint proposal is submitted by a combination of resident veteran, resident, resident minority, resident tribal or nonresident contractors, the preference provided pursuant to Subsection B, C or D of this section shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each contractor as specified in the joint bid or joint proposal.
[F.] A resident veteran contractor shall not benefit from the preference pursuant to this section for more than ten consecutive years. A person that is an owner of a business that is a resident veteran contractor shall not benefit from the preference pursuant to this section for more than ten consecutive years. A person shall not benefit from the provisions of this section based on more than one business concurrently.

[G.] F. A public body shall not award a contractor [both a resident contractor preference and a resident veteran contractor preference] more than one preference.

[H.] G. The procedures provided in Sections 13-1-172 through 13-1-183 NMSA 1978 or in an applicable purchasing ordinance apply to a protest to a public body concerning the awarding of a contract in violation of this section."

SECTION 24. REPEAL.--Laws 2012, Chapter 56, Section 4 and Laws 2015, Chapter 73, Section 25 are repealed.

SECTION 25. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.