

AN ACT

RELATING TO PROCUREMENT; INCREASING THE AMOUNT OF EXCLUDED SMALL PURCHASES; PROVIDING ADDITIONAL EXEMPTIONS; AUTHORIZING ELECTRONIC NOTICES AND RESPONSES; PROVIDING LIMITATIONS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Procurement Code is enacted to read:

"DEFINITION-- ELECTRONIC. -- "Electronic" includes electric, digital, magnetic, optical, electronic or similar medium."

Section 2. Section 13-1-77 NMSA 1978 (being Laws 1984, Chapter 65, Section 50) is amended to read:

"13-1-77. DEFINITION-- PURCHASE ORDER. -- "Purchase order" means the document issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction."

Section 3. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE. --

A. The provisions of the Procurement Code shall not apply to:

- (1) 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;

(2) procurement of tangible personal property or services for the governor's mansion and grounds;

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

(4) purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

(5) purchases of books and periodicals from the publishers or copyright holders thereof;

(6) travel or shipping by common carrier or by private conveyance or to meals and lodging;

(7) purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

(8) contracts with businesses for public school transportation services;

(9) 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 regulations adopted by the corrections commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

(10) minor purchases not exceeding five thousand dollars (\$5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;

(11) municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

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

(13) 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;

(14) 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;

(15) 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;

(16) contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

(17) contracts with professional entertainers;

(18) contracts and expenditures for 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; and

(19) works of art for museums or for display in public buildings or places.

Section 4. Section 13-1-99 NMSA 1978 (being Laws 1984, Chapter 65, Section 72, as amended) is amended to read:

"13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE STATE PURCHASING AGENT. -- Excluded from the requirement of procurement through the state purchasing agent but not from the requirements of the Procurement Code are the following:

A. procurement of professional services;

B. small purchases having a value not exceeding one thousand five hundred dollars (\$1,500);

- C. emergency procurement;
- D. procurement of highway construction or reconstruction by the state highway and transportation department;
- E. procurement by the judicial branch of state government;
- F. procurement by the legislative branch of state government;
- G. procurement by the boards of regents of state educational institutions named in Article 12, Section 11 of the constitution of New Mexico;
- H. procurement by the state fair commission of tangible personal property, services and construction under five thousand dollars (\$5,000);
- I. purchases from the instructional material fund;
- J. procurement by all local public bodies;
- K. procurement by regional education cooperatives;
- L. procurement by charter schools; and
- M. procurement by each state health care institution that provides direct patient care and that is, or a part of which is, medicaid certified and participating in the New Mexico medicaid program."

1984, Chapter 65, Section 77, as amended) is amended to read:

"13-1-104. COMPETITIVE SEALED BIDS--PUBLIC NOTICE. --

A. An invitation for bids or a notice thereof shall be published not less than ten calendar days prior to the date set forth for the opening of bids. In the case of purchases made by the state purchasing agent, the invitation or notice shall be published at least once in at least three newspapers of general circulation in this state; in addition, an invitation or notice may be published electronically on the state purchasing agent's web site that is maintained for that purpose. In the case of purchases made by other central purchasing offices, the invitation or notice shall be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located. These requirements of publication are in addition to any other procedures that may be adopted by central purchasing offices to notify prospective bidders that bids will be received, including publication in a trade journal, if available. If there is no newspaper of general circulation in the area in which the central purchasing office is located, such other notice may be given as is commercially reasonable.

B. Central purchasing offices shall send copies of the notice or invitation for bids involving the expenditure of more than ten thousand dollars (\$10,000) to

those businesses that have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and that have paid any required fees. A central purchasing office may set different registration fees for different categories of services, construction or items of tangible personal property, but such fees shall be related to the actual, direct cost of furnishing copies of the notice or invitation for bids to the prospective bidders. The fees shall be used exclusively for the purpose of furnishing copies of the notice or invitation for bids of proposed procurements to prospective bidders.

C. A central purchasing office may satisfy the requirement of sending copies of a notice or invitation for bids by distributing the documents to prospective bidders through electronic media. Central purchasing offices shall not require that prospective bidders receive a notice or invitation for bids through electronic media.

D. As used in this subsection, "prospective bidders" includes persons considering submission of a bid as a general contractor for the construction contract and persons who may submit bids to a general contractor for work to be subcontracted pursuant to the construction contract. Central purchasing offices shall make copies of invitations for bids for construction contracts available to prospective

bidders. A central purchasing office may require prospective bidders who have requested documents for bid on a construction contract to pay a deposit for a copy of the documents for bid. The deposit shall equal the full cost of reproduction and delivery of the documents for bid. The deposit, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within the time limits specified in the documents for bid, which time limits shall be no less than ten calendar days from the date of the bid opening. All forfeited deposits shall be credited to the funds of the applicable central purchasing office."

Section 6. Section 13-1-125 NMSA 1978 (being Laws 1984, Chapter 65, Section 98, as amended) is amended to read:

"13-1-125. SMALL PURCHASES. --

A. A central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding ten thousand dollars (\$10,000) in accordance with the applicable small purchase regulations adopted by the secretary, a local public body or a central purchasing office that has the authority to issue regulations.

B. Notwithstanding the requirements of Subsection A of this section, a central purchasing office may procure professional services having a value not exceeding twenty thousand dollars (\$20,000), excluding applicable state and

local gross receipts taxes, except for the services of architects, landscape architects, engineers or surveyors for state public works projects or local public works projects, in accordance with professional services procurement regulations promulgated by the department of finance and administration, the general services department or a central purchasing office with the authority to issue regulations.

C. Notwithstanding the requirements of Subsection A of this section, a state agency or a local public body may procure services, construction or items of tangible personal property having a value not exceeding one thousand five hundred dollars (\$1,500) by issuing a direct purchase order to a contractor based upon the best obtainable price.

D. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section."

Section 7. A new section of the Procurement Code is enacted to read:

"ELECTRONIC TRANSMISSIONS. --The state purchasing agent shall work with the attorney general to develop guidelines for central purchasing offices to use electronic media, including acceptance of sealed bids and requests for proposals that include electronic signatures. The guidelines shall include:

A. 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

B. accurate retrieval or conversion of electronic forms of information into a medium that permits inspection and copying. "

Section 8. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2001. _____