

1 SENATE BILL 443

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Sander Rue

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10 AN ACT

11 RELATING TO PROCUREMENT; PROVIDING DUTIES OF STATE AGENCIES,  
12 LOCAL PUBLIC BODIES AND THE STATE PURCHASING AGENT; PROVIDING  
13 EXEMPTIONS FROM THE PROCUREMENT CODE FOR CERTAIN PURCHASES;  
14 REVISING SMALL PURCHASE AMOUNTS; DEFINING "CHIEF PROCUREMENT  
15 OFFICER"; ESTABLISHING TRAINING REQUIREMENTS; PROVIDING  
16 ADDITIONAL PENALTIES FOR WILLFUL VIOLATIONS OF THE PROCUREMENT  
17 CODE.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. A new section of the Procurement Code is  
21 enacted to read:

22 "[NEW MATERIAL] DEFINITION--CHIEF PROCUREMENT OFFICER.--  
23 "Chief procurement officer" means that person within a state  
24 agency's or local public body's central purchasing office who  
25 is responsible for the control of procurement of items of

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1 tangible personal property, services or construction. "Chief  
2 procurement officer" includes the state purchasing agent."

3 SECTION 2. Section 13-1-37 NMSA 1978 (being Laws 1984,  
4 Chapter 65, Section 10) is amended to read:

5 "13-1-37. DEFINITION--CENTRAL PURCHASING OFFICE.--  
6 "Central purchasing office" means that office [~~or officer~~]  
7 within a state agency or a local public body responsible for  
8 the control of procurement of items of tangible personal  
9 property, services or construction. "Central purchasing  
10 office" includes the purchasing division of the general  
11 services department [~~and the state purchasing agent~~]."

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

14 "[NEW MATERIAL] CHIEF PROCUREMENT OFFICERS--REPORTING  
15 REQUIREMENT--TRAINING--CERTIFICATION.--

16 A. On or before January 1 of each year beginning in  
17 2014, and every time a chief procurement officer is hired, each  
18 state agency and local public body shall provide to the state  
19 purchasing agent the name of the state agency's or local public  
20 body's chief procurement officer and information identifying  
21 the state agency's or local public body's central purchasing  
22 office, if applicable.

23 B. The state purchasing agent shall maintain a list  
24 of the names of the chief procurement officers reported to the  
25 state purchasing agent by state agencies and local public

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1 bodies. The state purchasing agent shall make the list of  
2 chief procurement officers available to the public through the  
3 web site of the purchasing division of the general services  
4 department and in any other appropriate form.

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

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

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

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

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

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

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1           SECTION 4. Section 13-1-95 NMSA 1978 (being Laws 1984,  
2 Chapter 65, Section 68) is amended to read:

3           "13-1-95. PURCHASING DIVISION--CREATION--DIRECTOR IS  
4 STATE PURCHASING AGENT--APPOINTMENT--DUTIES.--

5           A. The "purchasing division" is created within the  
6 general services department.

7           B. Subject to the authority of the secretary, the  
8 state purchasing agent shall be the administrator and [~~chief~~  
9 ~~executive~~] director of the purchasing division. The state  
10 purchasing agent shall be appointed by the secretary with the  
11 approval of the governor.

12           C. The purchasing division and state purchasing  
13 agent shall be responsible for the procurement of services,  
14 construction and items of tangible personal property for all  
15 state agencies except as otherwise provided in the Procurement  
16 Code and shall administer the Procurement Code for those state  
17 agencies not excluded from the requirement of procurement  
18 through the state purchasing agent.

19           D. The state purchasing agent shall have the  
20 following additional authority and responsibility to:

21                   (1) recommend procurement [~~regulations~~] rules  
22 to the secretary;

23                   (2) establish and maintain programs for the  
24 development and use of procurement specifications and for the  
25 inspection, testing and acceptance of services, construction

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1 and items of tangible personal property;

2 (3) cooperate with the state budget division  
3 of the department of finance and administration in the  
4 preparation of statistical data concerning the acquisition and  
5 usage of all services, construction and items of tangible  
6 personal property by state agencies;

7 (4) require state agencies to furnish reports  
8 concerning usage, needs and stocks on hand of items of tangible  
9 personal property and usage and needs for services or  
10 construction;

11 (5) prescribe, with consent of the secretary,  
12 forms to be used by state agencies to requisition and report  
13 the procurement of items of tangible personal property,  
14 services and construction;

15 (6) provide information to state agencies and  
16 local public bodies concerning the development of  
17 specifications, quality control methods and other procurement  
18 information; and

19 (7) collect information concerning procurement  
20 matters, quality and quality control of commonly used services,  
21 construction and items of tangible personal property.

22 E. The state purchasing agent shall, upon the  
23 request of the central purchasing office of a local public  
24 body, procure a price agreement for the requested services,  
25 construction or items of tangible personal property. The state

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1 purchasing agent may procure a price agreement for services,  
2 construction or items of tangible personal property for a state  
3 agency or local public body that does not have a chief  
4 procurement officer."

5 SECTION 5. Section 13-1-97 NMSA 1978 (being Laws 1984,  
6 Chapter 65, Section 70) is amended to read:

7 "13-1-97. CENTRALIZATION OF PROCUREMENT AUTHORITY.--

8 A. All procurement for state agencies shall be  
9 performed by the state purchasing agent except as otherwise  
10 provided in the Procurement Code.

11 B. All procurement for state agencies excluded from  
12 the requirement of procurement through the office of the state  
13 purchasing agent shall be performed by a central purchasing  
14 office [~~designated by statute, the governing authority of that~~  
15 ~~state agency~~], the chief procurement officer or as otherwise  
16 provided in the Procurement Code.

17 C. All procurement for local public bodies shall be  
18 performed by a central purchasing office designated by the  
19 governing authority of the local public body except as  
20 otherwise provided in the Procurement Code. Local public  
21 bodies shall identify their designated central purchasing  
22 office to the state purchasing agent and shall report their  
23 chief procurement officers to the state purchasing agent."

24 SECTION 6. Section 13-1-98 NMSA 1978 (being Laws 1984,  
25 Chapter 65, Section 71, as amended) is amended to read:

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

3 A. procurement of items of tangible personal  
4 property or services by a state agency or a local public body  
5 from a state agency, a local public body or external  
6 procurement unit except as otherwise provided in Sections  
7 13-1-135 through 13-1-137 NMSA 1978;

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

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

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

17 E. purchases of books, [~~and~~] periodicals and  
18 training materials in electronic format from the publishers or  
19 copyright holders thereof;

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

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

25 H. contracts with businesses for public school

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1 transportation services;

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

9 J. [~~minor~~] purchases not exceeding [~~five thousand~~  
10 ~~dollars (\$5,000)~~] ten thousand dollars (\$10,000) consisting of  
11 magazine subscriptions, web-based or electronic subscriptions,  
12 conference registration fees and other similar purchases where  
13 prepayments are required;

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

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

20 M. contracts entered into by a local public body  
21 with a private independent contractor for the operation, or  
22 provision and operation, of a jail pursuant to Sections  
23 33-3-26 and 33-3-27 NMSA 1978;

24 N. contracts for maintenance of grounds and  
25 facilities at highway rest stops and other employment

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1 opportunities, excluding those intended for the direct care and  
2 support of persons with handicaps, entered into by state  
3 agencies with private, nonprofit, independent contractors who  
4 provide services to persons with handicaps;

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

10 P. contracts for retirement and other benefits  
11 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

12 Q. contracts with professional entertainers;

13 R. contracts and expenditures for legal  
14 subscription and research services and litigation expenses in  
15 connection with proceedings before administrative agencies or  
16 state or federal courts, including experts, mediators, court  
17 reporters, process servers and witness fees, but not including  
18 attorney contracts;

19 S. contracts for service relating to the design,  
20 engineering, financing, construction and acquisition of public  
21 improvements undertaken in improvement districts pursuant to  
22 Subsection L of Section 3-33-14.1 NMSA 1978 and in county  
23 improvement districts pursuant to Subsection L of Section  
24 4-55A-12.1 NMSA 1978;

25 T. works of art for museums or for display in

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1 public buildings or places;

2 U. contracts entered into by a local public body  
3 with a person, firm, organization, corporation or association  
4 or a state educational institution named in Article 12, Section  
5 11 of the constitution of New Mexico for the operation and  
6 maintenance of a hospital pursuant to Chapter 3, Article 44  
7 NMSA 1978, lease or operation of a county hospital pursuant to  
8 the Hospital Funding Act or operation and maintenance of a  
9 hospital pursuant to the Special Hospital District Act;

10 V. purchases of advertising in all media, including  
11 radio, television, print and electronic;

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

14 X. procurement of printing services for materials  
15 produced and intended for resale by the cultural affairs  
16 department;

17 Y. procurement by or through the public education  
18 department from the federal department of education relating to  
19 parent training and information centers designed to increase  
20 parent participation, projects and initiatives designed to  
21 improve outcomes for students with disabilities and other  
22 projects and initiatives relating to the administration of  
23 improvement strategy programs pursuant to the federal  
24 Individuals with Disabilities Education Act; provided that the  
25 exemption applies only to procurement of services not to exceed

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1 two hundred thousand dollars (\$200,000);

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

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

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

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

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

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

24 SECTION 7. Section 13-1-125 NMSA 1978 (being Laws 1984,  
25 Chapter 65, Section 98, as amended) is amended to read:

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

2 A. A central purchasing office shall procure  
3 services, construction or items of tangible personal property  
4 having a value not exceeding [~~twenty thousand dollars~~  
5 ~~(\$20,000)~~] sixty thousand dollars (\$60,000), excluding  
6 applicable state and local gross receipts taxes, in accordance  
7 with the applicable small purchase [~~regulations~~] rules adopted  
8 by the secretary, a local public body or a central purchasing  
9 office that has the authority to issue [~~regulations~~] rules.

10 B. Notwithstanding the requirements of Subsection A  
11 of this section, a central purchasing office may procure  
12 professional services having a value not exceeding [~~fifty~~  
13 ~~thousand dollars (\$50,000)~~] sixty thousand dollars (\$60,000),  
14 excluding applicable state and local gross receipts taxes,  
15 except for the services of landscape architects or surveyors  
16 for state public works projects or local public works projects,  
17 in accordance with professional services procurement  
18 [~~regulations~~] rules promulgated by the department of finance  
19 and administration, the general services department or a  
20 central purchasing office with the authority to issue  
21 [~~regulations~~] rules.

22 C. Notwithstanding the requirements of Subsection A  
23 of this section, a state agency or a local public body may  
24 procure services, construction or items of tangible personal  
25 property having a value not exceeding [~~ten thousand dollars~~

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1 ~~(\$10,000)~~ twenty thousand dollars (\$20,000), excluding  
2 applicable state and local gross receipts taxes, by issuing a  
3 direct purchase order to a contractor based upon the best  
4 obtainable price.

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

8 SECTION 8. Section 13-1-199 NMSA 1978 (being Laws 1984,  
9 Chapter 65, Section 172) is amended to read:

10 "13-1-199. ~~[MISDEMEANOR]~~ PENALTIES.~~--[Any business or]~~

11 A. A person [which violates the Procurement Code is  
12 guilty of a misdemeanor] who willfully violates the Procurement  
13 Code is guilty of:

14 (1) a misdemeanor if the aggregate monetary  
15 value of the violation is equal to or less than sixty thousand  
16 dollars (\$60,000) and shall be sentenced pursuant to the  
17 provisions of Section 31-19-1 NMSA 1978; or

18 (2) a fourth degree felony if the aggregate  
19 monetary value of the violation is greater than sixty thousand  
20 dollars (\$60,000) and shall be sentenced pursuant to the  
21 provisions of Section 31-18-15 NMSA 1978.

22 B. In addition to other fines or penalties provided  
23 by law, upon conviction as provided in Subsection A of this  
24 section, a public officer or employee shall forfeit the  
25 person's position, whether the person was hired, elected or

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1 appointed to the position.

2 C. The state purchasing agent or a central  
3 purchasing office may report suspected violations of the  
4 Procurement Code to the attorney general or the district  
5 attorney."

6 SECTION 9. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2013.

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