

1 SENATE BILL 114

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

4 Bill Tallman

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10 AN ACT

11 RELATING TO PROCUREMENT; AMENDING THE PROCUREMENT CODE; ADDING
12 AND AMENDING DEFINITIONS; REQUIRING THE APPROVAL OF THE
13 ATTORNEY GENERAL FOR EXECUTIVE BRANCH STATE AGENCY CONTRACTS
14 FOR LEGAL COUNSEL; REVISING THE PROCUREMENT CODE EXEMPTION FOR
15 ADVERTISING; ELIMINATING THE PROCUREMENT CODE EXEMPTIONS FOR
16 THE FORT BAYARD MEDICAL CENTER AND CERTAIN HOSPITAL AND HEALTH
17 CARE PROCUREMENT; DIRECTING THE STATE PURCHASING AGENT TO
18 APPROVE SOLE SOURCE PROCUREMENT DETERMINATIONS; LIMITING THE
19 TERM OF SOLE SOURCE AND EMERGENCY PROCUREMENT TO ONE YEAR;
20 PROVIDING ADDITIONAL REQUIREMENTS FOR PROCUREMENT UNDER
21 EXISTING CONTRACTS; REVISING THE TERM LIMITS OF MULTI-TERM
22 CONTRACTS AND PROVIDING LIMITATIONS ON PRICE AMENDMENTS; MAKING
23 TECHNICAL AND CONFORMING CHANGES; REPEALING SECTION 13-1-98.1
24 NMSA 1978 (BEING LAWS 1998, CHAPTER 69, SECTION 1).

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

2 SECTION 1. Section 9-7-6.5 NMSA 1978 (being Laws 2005,
3 Chapter 317, Section 1, as amended) is amended to read:

4 "9-7-6.5. AGREEMENTS FOR A REPLACEMENT FACILITY FOR FORT
5 BAYARD MEDICAL CENTER.--

6 A. Notwithstanding any other provision of state law
7 or rule, the secretary may do one or more of the following:

8 (1) enter into an agreement, including an
9 agreement with an independent contractor, to operate Fort
10 Bayard medical center or a replacement for Fort Bayard medical
11 center in Grant county;

12 (2) acquire by purchase, lease, construction,
13 lease purchase or other financing arrangement a facility to be
14 located in Grant county to replace Fort Bayard medical center;
15 provided that, if the acquisition results in the transfer of
16 the title to the facility, the title to the facility shall be
17 in the name of the facilities management division of the
18 general services department; or

19 (3) enter into an agreement with Grant county
20 under which the department may construct or cause to be
21 constructed the facility that will replace the Fort Bayard
22 medical center.

23 ~~[B. The provisions of the Procurement Code shall~~
24 ~~not apply to the procurement, by either the department or Grant~~
25 ~~county or both, of tangible personal property, services or~~

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1 ~~construction deemed necessary by the department to effectuate~~
2 ~~the provisions of this section. However, agreements related to~~
3 ~~the acquisition of the facility to replace Fort Bayard medical~~
4 ~~center shall be subject to the provisions of state law~~
5 ~~regulating the acquisition and disposal of real property by~~
6 ~~governmental entities.~~

7 ~~G.]~~ B. An operating agreement entered into pursuant
8 to this section shall include provisions for the continued
9 employment of all current and future Fort Bayard medical center
10 employees, excluding management employees of the contractor, as
11 state employees, entitled and subject to all the rights and
12 responsibilities of state employees. Under the terms of the
13 agreement and the overall direction of the department, the
14 independent contractor shall provide management and supervision
15 to state employees at Fort Bayard medical center, including the
16 provision of work assignments, evaluations and promotional and
17 disciplinary actions.

18 ~~[D.]~~ C. Pursuant to Section 15-3-35 NMSA 1978, the
19 legislature ratifies and approves a lease-purchase agreement,
20 in a form approved by the state board of finance, between the
21 department, as lessee-purchaser, and Grant county, as
22 lessor-seller, for the facility that will replace the Fort
23 Bayard medical center; provided that, upon transfer of title,
24 title to the facility shall be in the name of the facilities
25 management division of the general services department."

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1 SECTION 2. A new section of the Procurement Code is
2 enacted to read:

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

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

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

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

15 "[NEW MATERIAL] PROCUREMENT OF LEGAL COUNSEL--ATTORNEY
16 GENERAL APPROVAL REQUIRED.--An executive branch state agency
17 shall not award a contract for legal services to an attorney or
18 law firm without the approval of the attorney general."

19 SECTION 5. Section 13-1-38.1 NMSA 1978 (being Laws 2013,
20 Chapter 70, Section 1) is amended to read:

21 "13-1-38.1. DEFINITION--CHIEF PROCUREMENT OFFICER.--
22 "Chief procurement officer" or "procurement officer" means that
23 person within a state [~~agency's~~] agency or local public [~~body's~~
24 ~~central purchasing office~~] body who is responsible for the
25 control of procurement of items of tangible personal property,

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1 services or construction. "Chief procurement officer" includes
2 the state purchasing agent."

3 SECTION 6. Section 13-1-95.2 NMSA 1978 (being Laws 2013,
4 Chapter 70, Section 3) is amended to read:

5 "13-1-95.2. CHIEF PROCUREMENT OFFICERS--REPORTING AND
6 REGISTRATION REQUIREMENT--TRAINING--CERTIFICATION.--

7 A. [~~On or before January 1 of each year beginning~~
8 ~~in 2014, and every time]~~ When a chief procurement officer is
9 hired, [~~each~~] a state agency and local public body shall
10 provide to the state purchasing agent the name of the state
11 agency's or local public body's chief procurement officer and
12 information identifying the state agency's or local public
13 body's central purchasing office, if applicable, and shall
14 register the chief procurement officer on the website of the
15 purchasing division of the general services department and
16 update the registration information as needed.

17 B. The state purchasing agent shall maintain a list
18 of the names of the chief procurement officers reported to the
19 state purchasing agent by state agencies and local public
20 bodies. The state purchasing agent shall make the list of
21 chief procurement officers available to the public through the
22 [~~web site~~] website of the purchasing division of the general
23 services department and in any other appropriate form.

24 C. The state purchasing agent shall annually review
25 the list of chief procurement officers and notify the state

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1 agencies and local public bodies that do not have a chief
2 procurement officer on the list or are otherwise out of
3 compliance with Subsection A of this section.

4 D. The state purchasing agent shall annually report
5 to the office of the state auditor procurements made by state
6 agencies and local public bodies without a chief procurement
7 officer.

8 [~~G.~~] E. The state purchasing agent shall offer a
9 certification training program for chief procurement officers
10 each year.

11 [~~D. On or before January 1, 2015, the state~~
12 ~~purchasing agent shall establish a~~] F. The certification
13 program for chief procurement officers [~~that includes~~] shall
14 include an initial certification and recertification every two
15 years for all chief procurement officers. In order to be
16 recertified, a chief procurement officer shall pass a
17 recertification examination approved by the secretary of
18 general services.

19 [~~E. On and after July 1, 2015~~] G. Only certified
20 chief procurement officers may do the following, except that
21 persons using procurement cards may continue to issue purchase
22 orders and authorize small purchases:

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

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

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

5 SECTION 7. Section 13-1-98 NMSA 1978 (being Laws 1984,
6 Chapter 65, Section 71, as amended by Laws 2019, Chapter 48,
7 Section 13 and by Laws 2019, Chapter 63, Section 1) is amended
8 to read:

9 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
10 provisions of the Procurement Code shall not apply to:

11 A. procurement of items of tangible personal
12 property or services by a state agency or a local public body
13 from a state agency, a local public body or external
14 procurement unit except as otherwise provided in Sections
15 13-1-135 through 13-1-137 NMSA 1978;

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

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

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

25 E. purchases of books, periodicals and training

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1 materials in printed or electronic format from the publishers
2 or copyright holders thereof and purchases of print, digital or
3 electronic format library materials by public, school and state
4 libraries for access by the public;

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

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

10 H. contracts with businesses for public school
11 transportation services;

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

19 J. purchases not exceeding ten thousand dollars
20 (\$10,000) consisting of magazine subscriptions, web-based or
21 electronic subscriptions, conference registration fees and
22 other similar purchases where prepayments are required;

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

25 L. the issuance, sale and delivery of public

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1 securities pursuant to the applicable authorizing statute, with
2 the exception of bond attorneys and general financial
3 consultants;

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

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

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

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

21 Q. contracts with professional entertainers;

22 R. contracts and expenditures for legal
23 subscription and research services and litigation expenses in
24 connection with proceedings before administrative agencies or
25 state or federal courts, including experts, mediators, court

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1 reporters, process servers and witness fees, but not including
2 attorney contracts;

3 S. contracts for service relating to the design,
4 engineering, financing, construction and acquisition of public
5 improvements undertaken in improvement districts pursuant to
6 Subsection L of Section 3-33-14.1 NMSA 1978 and in county
7 improvement districts pursuant to Subsection L of Section
8 4-55A-12.1 NMSA 1978;

9 T. works of art for museums or for display in
10 public buildings or places;

11 U. contracts entered into by a local public body
12 with a person, firm, organization, corporation or association
13 or a state educational institution named in Article 12, Section
14 11 of the constitution of New Mexico for the operation and
15 maintenance of a hospital pursuant to Chapter 3, Article 44
16 NMSA 1978, lease or operation of a county hospital pursuant to
17 the Hospital Funding Act or operation and maintenance of a
18 hospital pursuant to the Special Hospital District Act;

19 V. purchases not exceeding ten thousand dollars
20 (\$10,000) of advertising in [~~all~~] any media, including radio,
21 television, print and electronic. The Procurement Code shall
22 apply to marketing;

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

25 X. procurement of printing, publishing and

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1 distribution services for materials produced and intended for
2 resale by the cultural affairs department;

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

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

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

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

23 GC.] BB. contracts for investment advisory
24 services, investment management services or other investment-
25 related services entered into by the educational retirement

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1 board, the state investment officer or the retirement board
2 created pursuant to the Public Employees Retirement Act;

3 ~~[DD-]~~ CC. the purchase for resale by the state fair
4 commission of feed and other items necessary for the upkeep of
5 livestock;

6 ~~[EE-]~~ DD. contracts entered into by the crime
7 victims reparation commission to distribute federal grants to
8 assist victims of crime, including grants from the federal
9 Victims of Crime Act of 1984 and the federal Violence Against
10 Women Act of 1994;

11 ~~[FF-]~~ EE. procurement by or through the early
12 childhood education and care department of early pre-
13 kindergarten and pre-kindergarten services purchased pursuant
14 to the Pre-Kindergarten Act;

15 ~~[GG-]~~ FF. procurement of services of commissioned
16 advertising sales representatives for New Mexico magazine; and

17 ~~[HH-]~~ GG. procurements exempt from the Procurement
18 Code as otherwise provided by law."

19 SECTION 8. Section 13-1-126 NMSA 1978 (being Laws 1984,
20 Chapter 65, Section 99, as amended) is amended to read:

21 "13-1-126. SOLE SOURCE PROCUREMENT--CONDITIONS---

22 A. A contract may be awarded without competitive
23 sealed bids or competitive sealed proposals regardless of the
24 estimated cost when the state purchasing agent or a central
25 purchasing office determines, in writing, that:

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1 (1) there is only one source for the required
2 service, construction or item of tangible personal property;

3 (2) the service, construction or item of
4 tangible personal property is unique and this uniqueness is
5 substantially related to the intended purpose of the contract;
6 and

7 (3) other similar services, construction or
8 items of tangible personal property cannot meet the intended
9 purpose of the contract.

10 B. The state purchasing agent or a central
11 purchasing office shall use due diligence in determining the
12 basis for the sole source procurement, including reviewing
13 available sources and consulting the using agency, and shall
14 include its written determination in the procurement file.

15 C. Before an executive branch state agency or local
16 public body awards a sole source contract and before services
17 are performed or items of tangible personal property are
18 provided pursuant to a sole source contract, the executive
19 branch state agency or local public body shall provide its
20 written determination to the state purchasing agent. The state
21 purchasing agent shall review the written determination and, if
22 the conditions of Subsection A of this section are met, approve
23 the sole source procurement.

24 [~~C.~~] D. The state purchasing agent or a central
25 purchasing office shall conduct negotiations, as appropriate,

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1 as to price, delivery and quantity in order to obtain the price
2 most advantageous to the state agency or a local public body.

3 ~~[D.]~~ E. A contract for the purchase of research
4 consultant services by institutions of higher learning
5 constitutes a sole source procurement.

6 ~~[E.]~~ F. The state purchasing agent or a central
7 purchasing office shall not circumvent this section by narrowly
8 drafting specifications so that only one predetermined source
9 would satisfy those specifications.

10 G. The term of a sole source procurement shall not
11 exceed one year."

12 SECTION 9. Section 13-1-127 NMSA 1978 (being Laws 2019,
13 Chapter 153, Section 5) is amended to read:

14 "13-1-127. EMERGENCY PROCUREMENT--REQUIRED CONDITIONS--
15 LIMITATIONS--NOTICE.--

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

20 (1) is needed immediately to:

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

25 (b) plan or prepare for the response to

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1 a serious threat to public health, welfare, safety or property
2 caused by a flood, fire, epidemic, riot, act of terrorism,
3 equipment failure or similar event; and

4 (2) cannot be acquired through normal
5 procurement methods.

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

8 (1) in making an emergency procurement, shall:

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

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

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

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

20 (1) the state purchasing agent shall post
21 notice of the procurement on its website; or

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

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

11 E. The term of an emergency procurement shall not
12 exceed one year."

13 SECTION 10. Section 13-1-129 NMSA 1978 (being Laws 1984,
14 Chapter 65, Section 102, as amended) is amended to read:

15 "13-1-129. PROCUREMENT UNDER EXISTING CONTRACTS.--

16 A. Notwithstanding the requirements of Sections
17 13-1-102 through 13-1-118 NMSA 1978, the state purchasing agent
18 or a central purchasing office may contract for services,
19 construction or items of tangible personal property without the
20 use of competitive sealed bids or competitive sealed proposals
21 as follows:

22 (1) at a price equal to or less than the
23 contractor's current federal supply contract price (GSA),
24 providing the contractor has indicated in writing a willingness
25 to extend such contractor pricing, terms and conditions to the

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1 state agency or local public body and the purchase order
2 adequately identifies the contract relied upon; or

3 (2) with a business [~~which~~] that has a current
4 exclusive or nonexclusive price agreement with the state
5 purchasing agent or a central purchasing office for the item,
6 services or construction meeting the same standards and
7 specifications as the items to be procured if the following
8 conditions are met:

9 (a) the quantity purchased does not
10 exceed the quantity [~~which~~] that may be purchased under the
11 applicable price agreement; [~~and~~]

12 (b) the purchase order adequately
13 identifies the price agreement relied upon;

14 (c) for the purchase of services, other
15 than professional services, having a value greater than sixty
16 thousand dollars (\$60,000) or professional services having a
17 value greater than five thousand dollars (\$5,000), an executive
18 branch state agency or local public body enters into a separate
19 contract with the business that defines the scope of the work
20 for the business according to the terms of the price agreement;
21 and

22 (d) for the purchase of services, other
23 than professional services, or items of tangible personal
24 property having a value between ten thousand dollars (\$10,000)
25 and sixty thousand dollars (\$60,000), an executive branch state

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1 agency obtains three quotes for the services or items of
2 tangible personal property and documents the quotes in the
3 statewide human resources, accounting and management reporting
4 system.

5 B. The central purchasing office shall retain for
6 public inspection and for the use of auditors a copy of each
7 federal supply contractor state purchasing agent price
8 agreement or exclusive or nonexclusive price agreement with the
9 state purchasing agent or a central purchasing office relied
10 upon to make purchases without seeking competitive bids or
11 proposals."

12 SECTION 11. Section 13-1-150 NMSA 1978 (being Laws 1984,
13 Chapter 65, Section 123, as amended) is amended to read:

14 "13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

15 A. A multi-term contract for items of tangible
16 personal property, construction or services except for
17 professional services [~~in an amount under twenty-five thousand~~
18 ~~dollars (\$25,000)] may be entered into for any period of time~~
19 deemed to be in the best interests of the state agency or a
20 local public body not to exceed [~~four~~] five years, [~~provided~~
21 ~~that~~] including all extensions and renewals, except that for a
22 contract entered into pursuant to the Public Facility Energy
23 Efficiency and Water Conservation Act, the term shall not
24 exceed twenty-five years, including all extensions and
25 renewals. The term of the contract and conditions of renewal

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1 or extension, if any, ~~[are]~~ shall be included in the
2 specifications, and funds ~~[are]~~ shall be available for the
3 first fiscal period at the time of contracting. ~~[If the amount~~
4 ~~of the contract is twenty-five thousand dollars (\$25,000) or~~
5 ~~more, the term shall not exceed ten years, including all~~
6 ~~extensions and renewals, except that for a contract entered~~
7 ~~into pursuant to the Public Facility Energy Efficiency and~~
8 ~~Water Conservation Act, the term shall not exceed twenty-five~~
9 ~~years, including all extensions and renewals.]~~ Payment and
10 performance obligations for succeeding fiscal periods shall be
11 subject to the availability and appropriation of funds
12 therefor.

13 B. A contract for professional services may not
14 exceed four years, including all extensions and renewals,
15 except for the following:

16 (1) services required to support or operate
17 federally certified medicaid, financial assistance and child
18 support enforcement management information or payment systems;

19 (2) services to design, develop or implement
20 the taxation and revenue information management systems project
21 authorized by Laws 1997, Chapter 125;

22 (3) a multi-term contract for the services of
23 trustees, escrow agents, registrars, paying agents, letter of
24 credit issuers and other forms of credit enhancement and other
25 similar services, excluding bond attorneys, underwriters and

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1 financial advisors with regard to the issuance, sale and
2 delivery of public securities, may be for the life of the
3 securities or as long as the securities remain outstanding;

4 (4) services relating to the implementation,
5 operation and administration of the Education Trust Act;

6 (5) services relating to measurement and
7 verification of conservation-related cost savings and utility
8 cost savings pursuant to the Public Facility Energy Efficiency
9 and Water Conservation Act; and

10 (6) services relating to the design and
11 engineering of a state public works project:

12 (a) for a period not to exceed the
13 requisite time for project completion and a subsequent warranty
14 period; and

15 (b) upon approval of the secretary of
16 finance and administration.

17 C. A price or cost increase included as part of an
18 extension or renewal of a multi-term contract shall not exceed
19 the price of the original contract, as cumulatively adjusted
20 pursuant to any previous price or cost adjustment, multiplied
21 by a fraction, the numerator of which is the most recent
22 monthly consumer price index available at the time of the
23 extension or renewal and the denominator of which is the
24 consumer price index for the same month in the preceding
25 calendar year. For the purposes of this subsection, "consumer

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1 price index" means the consumer price index for all urban
2 consumers for all items as published by the United States
3 bureau of labor statistics."

4 SECTION 12. REPEAL.--Section 13-1-98.1 NMSA 1978 (being
5 Laws 1998, Chapter 69, Section 1) is repealed.