

1 SENATE BILL 76

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Bill Tallman

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6  
7  
8 FOR THE LEGISLATIVE FINANCE COMMITTEE

9  
10 AN ACT

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

23  
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

25 SECTION 1. Section 9-7-6.5 NMSA 1978 (being Laws 2005,

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1 Chapter 317, Section 1, as amended) is amended to read:

2 "9-7-6.5. AGREEMENTS FOR A REPLACEMENT FACILITY FOR FORT  
3 BAYARD MEDICAL CENTER.--

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

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

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

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

21 ~~[B. The provisions of the Procurement Code shall~~  
22 ~~not apply to the procurement, by either the department or Grant~~  
23 ~~county or both, of tangible personal property, services or~~  
24 ~~construction deemed necessary by the department to effectuate~~  
25 ~~the provisions of this section. However, agreements related to~~

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1 ~~the acquisition of the facility to replace Fort Bayard medical~~  
2 ~~center shall be subject to the provisions of state law~~  
3 ~~regulating the acquisition and disposal of real property by~~  
4 ~~governmental entities.~~

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

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

24           **SECTION 2.** A new section of the Procurement Code is  
25 enacted to read:

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

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

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

11           SECTION 4. Section 13-1-38.1 NMSA 1978 (being Laws 2013,  
12 Chapter 70, Section 1) is amended to read:

13           "13-1-38.1. DEFINITION--CHIEF PROCUREMENT OFFICER.--  
14 "Chief procurement officer" or "procurement officer" means that  
15 person within a state [~~agency's~~] agency or local public [~~body's~~  
16 ~~central purchasing office~~] body who is responsible for the  
17 control of procurement of items of tangible personal property,  
18 services or construction. "Chief procurement officer" includes  
19 the state purchasing agent."

20           SECTION 5. Section 13-1-95.2 NMSA 1978 (being Laws 2013,  
21 Chapter 70, Section 3) is amended to read:

22           "13-1-95.2. CHIEF PROCUREMENT OFFICERS--REPORTING AND  
23 REGISTRATION REQUIREMENT--TRAINING--CERTIFICATION.--

24           A. [~~On or before January 1 of each year beginning~~  
25 ~~in 2014, and every time~~] When a chief procurement officer is

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1 hired, [~~each~~] a state agency and local public body shall  
2 provide to the state purchasing agent the name of the state  
3 agency's or local public body's chief procurement officer and  
4 information identifying the state agency's or local public  
5 body's central purchasing office, if applicable, and shall  
6 register the chief procurement officer on the website of the  
7 purchasing division of the general services department and  
8 update the registration information as needed.

9 B. The state purchasing agent shall maintain a list  
10 of the names of the chief procurement officers reported to the  
11 state purchasing agent by state agencies and local public  
12 bodies. The state purchasing agent shall make the list of  
13 chief procurement officers available to the public through the  
14 [~~web site~~] website of the purchasing division of the general  
15 services department and in any other appropriate form.

16 C. The state purchasing agent shall annually review  
17 the list of chief procurement officers and notify the state  
18 agencies and local public bodies that do not have a chief  
19 procurement officer on the list or are otherwise out of  
20 compliance with Subsection A of this section and provide a copy  
21 of the notification to the state ethics commission.

22 D. The state purchasing agent shall annually report  
23 to the office of the state auditor procurements made by state  
24 agencies and local public bodies without a chief procurement  
25 officer.

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1                   ~~[G.]~~ E. The state purchasing agent shall offer a  
2 certification training program for chief procurement officers  
3 each year.

4                   ~~[D. On or before January 1, 2015, the state~~  
5 ~~purchasing agent shall establish a]~~ F. The certification  
6 program for chief procurement officers ~~[that includes]~~ shall  
7 include an initial certification and recertification every two  
8 years for all chief procurement officers. In order to be  
9 recertified, a chief procurement officer shall pass a  
10 recertification examination approved by the secretary of  
11 general services.

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

- 16                                 (1) make determinations, including  
17 determinations regarding exemptions, pursuant to the  
18 Procurement Code;
- 19                                 (2) issue purchase orders and authorize small  
20 purchases pursuant to the Procurement Code; and
- 21                                 (3) approve procurement pursuant to the  
22 Procurement Code."

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

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

4 A. procurement of items of tangible personal  
5 property or services by a state agency or a local public body  
6 from a state agency, a local public body or external  
7 procurement unit except as otherwise provided in Sections  
8 13-1-135 through 13-1-137 NMSA 1978;

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

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

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

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

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

25 G. purchase of livestock at auction rings or to the

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1 procurement of animals to be used for research and  
2 experimentation or exhibit;

3 H. contracts with businesses for public school  
4 transportation services;

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

12 J. purchases not exceeding ten thousand dollars  
13 (\$10,000) consisting of magazine subscriptions, web-based or  
14 electronic subscriptions, conference registration fees and  
15 other similar purchases where prepayments are required;

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

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

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

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

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

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

14 Q. contracts with professional entertainers;

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

21 S. contracts for service relating to the design,  
22 engineering, financing, construction and acquisition of public  
23 improvements undertaken in improvement districts pursuant to  
24 Subsection L of Section 3-33-14.1 NMSA 1978 and in county  
25 improvement districts pursuant to Subsection L of Section  
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1 4-55A-12.1 NMSA 1978;

2 T. works of art for museums or for display in  
3 public buildings or places;

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

12 V. purchases not exceeding ten thousand dollars  
13 (\$10,000) of advertising in ~~[all]~~ any media, including radio,  
14 television, print and electronic. The Procurement Code shall  
15 apply to marketing;

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

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

21 Y. procurement by or through the public education  
22 department from the federal department of education relating to  
23 parent training and information centers designed to increase  
24 parent participation, projects and initiatives designed to  
25 improve outcomes for students with disabilities and other

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1 projects and initiatives relating to the administration of  
2 improvement strategy programs pursuant to the federal  
3 Individuals with Disabilities Education Act; provided that the  
4 exemption applies only to procurement of services not to exceed  
5 two hundred thousand dollars (\$200,000);

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

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

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

16 ~~GG.]~~ BB. contracts for investment advisory  
17 services, investment management services or other investment-  
18 related services entered into by the educational retirement  
19 board, the state investment officer or the retirement board  
20 created pursuant to the Public Employees Retirement Act;

21 ~~[DD.]~~ CC. the purchase for resale by the state fair  
22 commission of feed and other items necessary for the upkeep of  
23 livestock;

24 ~~[EE.]~~ DD. contracts entered into by the crime  
25 victims reparation commission to distribute federal grants to

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1 assist victims of crime, including grants from the federal  
2 Victims of Crime Act of 1984 and the federal Violence Against  
3 Women Act of 1994;

4 ~~[FF-]~~ EE. procurement by or through the early  
5 childhood education and care department of early pre-  
6 kindergarten and pre-kindergarten services purchased pursuant  
7 to the Pre-Kindergarten Act;

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

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

12 SECTION 7. Section 13-1-126 NMSA 1978 (being Laws 1984,  
13 Chapter 65, Section 99, as amended) is amended to read:

14 "13-1-126. SOLE SOURCE PROCUREMENT--CONDITIONS---

15 A. A contract may be awarded without competitive  
16 sealed bids or competitive sealed proposals regardless of the  
17 estimated cost when the state purchasing agent or the chief  
18 procurement officer of a central purchasing office determines,  
19 in writing, that:

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

22 (2) the service, construction or item of  
23 tangible personal property is unique and this uniqueness is  
24 substantially related to the intended purpose of the contract;  
25 and

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

4 B. The state purchasing agent or a central  
5 purchasing office shall use due diligence in determining the  
6 basis for the sole source procurement, including reviewing  
7 available sources and consulting the using agency, and shall  
8 include its written determination in the procurement file.

9 C. An executive branch state agency or local public  
10 body may award a sole source contract only if the executive  
11 branch state agency or local public body provides its written  
12 determination to the state purchasing agent and the state  
13 purchasing agent approves the determination because the  
14 conditions of Subsection A of this section are met. The state  
15 purchasing agent shall review the written determination  
16 submitted by an executive branch state agency or local public  
17 body and decide within fifteen days after receipt of the  
18 written determination whether the conditions of Subsection A of  
19 this section are met. The state purchasing agent's approval,  
20 along with the written determination, shall be part of the  
21 procurement file.

22 [~~C.~~] D. The state purchasing agent or a central  
23 purchasing office shall conduct negotiations, as appropriate,  
24 as to price, delivery and quantity in order to obtain the price  
25 most advantageous to the state agency or a local public body.

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

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

8           G. The term of a sole source procurement shall not  
9 exceed one year."

10           **SECTION 8.** Section 13-1-127 NMSA 1978 (being Laws 2019,  
11 Chapter 153, Section 5) is amended to read:

12           "13-1-127. EMERGENCY PROCUREMENT--REQUIRED CONDITIONS--  
13 LIMITATIONS--NOTICE.--

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

18                           (1) is needed immediately to:

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

23                                   (b) plan or prepare for the response to  
24 a serious threat to public health, welfare, safety or property  
25 caused by a flood, fire, epidemic, riot, act of terrorism,

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1 equipment failure or similar event; and

2 (2) cannot be acquired through normal  
3 procurement methods.

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

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

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

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

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

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

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

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

24 D. The state purchasing agent or a central  
25 purchasing office that makes an emergency procurement to plan

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

9 E. The term of an emergency procurement shall not  
10 exceed one year."

11 SECTION 9. Section 13-1-129 NMSA 1978 (being Laws 1984,  
12 Chapter 65, Section 102, as amended) is amended to read:

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

14 A. Notwithstanding the requirements of Sections  
15 13-1-102 through 13-1-118 NMSA 1978, the state purchasing agent  
16 or a central purchasing office may contract for services,  
17 construction or items of tangible personal property without the  
18 use of competitive sealed bids or competitive sealed proposals  
19 as follows:

20 (1) at a price equal to or less than the  
21 contractor's current federal supply contract price (GSA),  
22 providing the contractor has indicated in writing a willingness  
23 to extend such contractor pricing, terms and conditions to the  
24 state agency or local public body and the purchase order  
25 adequately identifies the contract relied upon; or

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

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

10 (b) the purchase order adequately  
11 identifies the price agreement relied upon;

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

20 (d) for the purchase of construction or  
21 services, other than professional services, or items of  
22 tangible personal property having a value between ten thousand  
23 dollars (\$10,000) and sixty thousand dollars (\$60,000), an  
24 executive branch state agency or local public body obtains  
25 three quotes for the construction, services or items of

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1 tangible personal property and documents the quotes in the  
2 procurement file and, for executive branch state agencies, in  
3 the statewide human resources, accounting and management  
4 reporting 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 10. 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 11. Section 13-1-154.1 NMSA 1978 (being Laws  
5 2007, Chapter 312, Section 1, as amended) is amended to read:

6 "13-1-154.1. MULTIPLE SOURCE CONTRACTS--ARCHITECTURAL AND  
7 ENGINEERING SERVICES CONTRACTS--INDEFINITE QUANTITY  
8 CONSTRUCTION CONTRACTS.--

9 A. A state agency or local public body may procure  
10 multiple architectural or engineering services contracts for  
11 multiple projects under a single qualifications-based request  
12 for proposals; provided that the total amount of multiple  
13 contracts and all renewals for a single contractor does not  
14 exceed seven million five hundred thousand dollars (\$7,500,000)  
15 over four years and that a single contract, including any  
16 renewals, does not exceed six hundred fifty thousand dollars  
17 (\$650,000).

18 B. A state agency or local public body may procure  
19 multiple indefinite quantity construction contracts pursuant to  
20 a price agreement for multiple projects under a single request  
21 for proposals or invitation to bid; provided that the total  
22 amount of a contract and all renewals does not exceed twelve  
23 million five hundred thousand dollars (\$12,500,000) over three  
24 years and the contract provides that any one purchase order  
25 under the contract may not exceed four million dollars

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1 (\$4,000,000).

2 C. A state agency or local public body may make  
3 procurements in accordance with the provisions of Subsection A  
4 or B of this section if:

5 (1) the advertisement and request for  
6 proposals states that multiple contracts may or will be  
7 awarded, states the number of contracts that may or will be  
8 awarded and describes the services or construction to be  
9 performed under each contract;

10 (2) there is a single selection process for  
11 all of the multiple contracts, except that for each contract  
12 there may be a separate final list and a separate negotiation  
13 of contract terms; and

14 (3) each of the multiple contracts for  
15 architectural or engineering services has a term not exceeding  
16 four years, or for construction, has a term not exceeding three  
17 years, each including all extensions and renewals.

18 D. A contract to be awarded pursuant to this  
19 section to a firm that is currently performing under a contract  
20 issued pursuant to this section shall not cause the total  
21 amount of all contracts issued pursuant to this section to that  
22 firm to exceed:

23 (1) seven million five hundred thousand  
24 dollars (\$7,500,000) in any four-year period for architectural  
25 or engineering services; or

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[bracketed material] = delete

1 (2) twelve million five hundred thousand  
2 dollars (\$12,500,000) in any three-year period for  
3 construction.

4 E. Procurement pursuant to this section is subject  
5 to the limitations of Sections 13-1-150 through 13-1-154 NMSA  
6 1978.

7 F. A state agency and a local public body, not  
8 including an agency of the legislative or judicial branch of  
9 state government, shall report to the legislative finance  
10 committee on an annual basis and to the purchasing division of  
11 the general services department on, at minimum, a quarterly  
12 basis the aggregate amount of contracts for each contractor and  
13 the corresponding amounts to be spent under each multiple  
14 source contract pursuant to this section. The general services  
15 department may promulgate rules regarding reporting to the  
16 department pursuant to this subsection."

17 SECTION 12. Section 13-1-198 NMSA 1978 (being Laws 1984,  
18 Chapter 65, Section 171) is amended to read:

19 "13-1-198. KICK-BACKS--ADDITIONAL CIVIL PENALTY.--~~[Upon a~~  
20 ~~showing that a subcontractor made a kick-back to a prime~~  
21 ~~contractor or a higher-tier subcontractor in connection with~~  
22 ~~the award of a subcontract or order thereunder]~~

23 A. It is conclusively presumed that the amount  
24 [~~thereof~~] of a kick-back was included in the price of the  
25 subcontract or order [~~and~~] that was ultimately borne by the

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underscoring material = new  
~~[bracketed material] = delete~~

1 state agency or a local public body if it is shown that:

2 (1) a subcontractor made a kick-back to a  
3 prime contractor or a higher-tier subcontractor in connection  
4 with the procurement award or order; or

5 (2) a contractor or subcontractor made a kick-  
6 back to a public official or public employee.

7 B. An amount equal to the kick-back ~~[is]~~ shall be  
8 imposed upon the recipient and upon the subcontractor making  
9 the kick-back as ~~[a]~~ an additional civil penalty by the state  
10 agency or a local public body ~~[upon the recipient and upon the~~  
11 ~~subcontractor making such kick-backs]~~ in addition but pursuant  
12 to the terms and conditions of Section ~~[169 of the Procurement~~  
13 ~~Code]~~ 13-1-196 NMSA 1978."

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