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FISCAL IMPACT REPORT

SPONSOR <u>Sen. Padilla/Reps. Lundstrom and Garratt</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/06/25</u>
SHORT TITLE <u>Procurement Changes</u>	BILL NUMBER <u>Senate Bill 206</u>
	ANALYST <u>Fischer</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		At least \$55,000.0	At least \$55,000.0	At least \$110,000.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files
 LFC Program Evaluation Unit Reports:
 Progress Report: *Obtaining and Maximizing Value in State Procurement*, October 2021
 Program Evaluation: *Maximizing Value in Procurement*, October 2019
 Program Evaluation: *Obtaining Value in State Procurement and Issues with Non-Competitive Methods*, October 2016

Agency Analysis Received From
 General Services Department
 Department of Information Technology
 Commission of Public Records
 State Ethics Commission
 Department of Cultural Affairs
 Early Childhood Education and Care Department

SUMMARY

Synopsis of Senate Bill 206

Senate Bill 206 (SB206) contains several changes to the state’s Procurement Code in Section 13 NMSA 1978, which establishes the rules, procedures, and ethical standards governing how New Mexico government entities purchase goods, services, and construction projects.

The bill would add several new exemptions from the Procurement Code. These exemptions would not only exempt these procurements from the requirement of a sealed, competitive bid or proposal process, but also from the basic disclosure, anti-corruption, and conflict-of-interest provisions of the code, set forth in Sections 13-1-190 through 13-1-195 NMSA 1978, which together prohibit bribes and kickbacks, require disclosure of campaign contributions, prohibit contemporaneous employment with both the government and contracting party, and prohibit the

use of confidential information for private gain. Those new exemptions are for:

- Contracts between the Early Childhood Education and Care Department (ECECD) and childcare businesses and for slots for childcare assistance,
- Contracts for the Department of Information Technology (DoIT) to acquire and replace capital licenses used to provide IT enterprise services,
- Contracts for the digitization of state or federal records, and
- Contracts for appraisals or surveys for the sale or purchase of real property.

Under additional provisions that would remove or lessen restriction, the bill would:

- Increase the cost threshold for local and state public works projects from \$50 thousand to \$100 thousand, an amount which triggers the required use of competitive, sealed qualifications-based proposals;
- Double the maximum time for professional services contracts from four to eight years but exempt newly defined public-private partnership agreements from that time limit;
- Increase the small purchase procurement exception to the use of competitive, sealed bids from \$60 thousand to \$100 thousand;
- Increase the dollar threshold by which agencies can procure goods or services via a direct purchase order (i.e., outside another contract vehicle and without gathering quotes) from \$20 thousand to \$60 thousand.
- Raise the cap of small purchases not subject to procurement officer review from \$1,500 to \$10 thousand;
- Decrease the required posting time for invitations to bid from 10 days to three days, and allows state purchasing to advertise the invitation to bid (ITB) notice on its website rather than in general circulation state newspapers;
- Increase the dollar threshold for alerting interested businesses to posted ITBs from \$20 thousand to \$100 thousand;
- Decrease the amount of time agencies must post potential sole-source contracts on the state Sunshine Portal from 30 days to 15 days;
- Increase the dollar threshold by which contractors need to submit cost or pricing data from \$25 thousand to \$60 thousand and require it only if the contract is to be awarded by requests for proposal (RFP) or ITB;
- Increase the dollar threshold for the procurement exemption for magazine or other subscriptions, conference registration fees, and other similar purchases from \$10 thousand to \$100 thousand;
- Limit sole source contracts to four years, including all extensions and renewals—currently DFA sets limitations of sole sources to one year, with room for exceptions

Other changes in SB206 seek to add new clarification or guardrails on how the state spends public dollars. The bill would:

- Clarify that the existing procurement exemption for advertising does not include marketing purchases,
- Clarify that the existing procurement exemption for subscriptions is not for software licenses or maintenance agreements, where prepayments are required.

Finally, SB206 makes a number of changes to procurement processes within state government that would:

- Allow for delegation of the sufficiency review of professional services contracts by the General Services Department (GSD),
- Allow state agencies and local public bodies to have up to two chief procurement officers instead of just one,
- Allow bids containing a mistake discovered before bid opening to be modified or withdrawn by electronic notice provided to the procurement manager or the individual identified in the request for proposal,
- Require the state purchasing agent at GSD to maintain, rather than establish, a list of all chief procurement officers and to set up an alternative continuing education process for agency and local chief procurement officers to be recertified;
- Expand the pool of state employees that can negotiate contracts for architectural, landscape architectural, engineering, or surveying services—currently limited the GSD and the Department of Transportation (NMDOT) secretaries or their designees—to also include the Cultural Affairs Department and the GSD Facilities Management Division director or their designees.

The General Services Department noted SB206 is an agency-endorsed bill. The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

The LFC has, since 2016, issued three Program Evaluation Unit reports noting the hazards of noncompetitive procurement processes. In an ideal world, all the goods and services that New Mexico government entities buy with taxpayer dollars would be competitively sourced, with vendors competing to offer the best discounts to secure the state as a customer. The state would facilitate this situation by employing a central group of professionals responsible for ensuring the state gets the best deals. This type of procurement would naturally combat the waste, fraud, and abuse of taxpayer dollars that can inadvertently or purposefully occur without such oversight and guardrails. However, as highlighted by LFC evaluations, overuse of Procurement Code exemptions and other loopholes have often led to state overspending for purchases ranging from everyday acquisitions of laptops and cars to noncompetitively sourced contracts worth hundreds of millions of dollars. Any continued widening of these exemptions and additions of noncompetitive procurement processes would only increase opportunities for waste, fraud, and abuse to streamline and speed up bureaucratic processes.

Multiple sources indicate a well-run procurement program can save an organization 5 percent to 10 percent on costs. Assuming the removal of guardrails on professional services contracts in SB206 would drive up prices by a very moderate 5 percent, the fiscal impact is likely to be at least \$55 million, based on the \$1.1 billion in professional services contracts process by GSD's Contract Review Bureau in FY24. The impact of the bill, however, extends beyond professional services contracts and lifts restrictions on childcare assistance contracts—representing \$308 million in spending—digitization services, small purchases and small public works projects, and direct purchase orders. It is likely the overall cost could be substantially higher.

SIGNIFICANT ISSUES

The Ethics Commission flags similar concerns about removing guardrails from the Procurement Code:

The Procurement Code’s default rule is that government procurement of goods and services should follow a competitive, sealed process. *See* § 13-1-102. However, the Procurement Code is mainly a catalog of exceptions to this default rule, providing that the procuring government agency has significant or complete discretion to decide how to select a contractor the government will do business with. *See generally* § 13-1-102 through -199. This is *favoritism under law*: the executive’s relatively unconstrained ability to select government contractors without the use of any competitive selection process. This unfettered discretion exists because of legislative decisions to limit the reach and application of the Procurement Code’s default rule of a requirement of a competitive, sealed process. While such discretion makes government procurement mercifully less cumbersome for government agencies, it concomitantly increases the scope for favoritism in contracting by those executive officials and employees who ultimately make procurement decisions in their respective agencies.”

Along the same lines, but specific to the new exemption for contracts to digitize records, the Commission on Public Records notes, “By adding an exception to Procurement Code for digitization of federal or state records, proposed Subsection KK (p.12 of the bill), there is a potential for abuse regarding this exception due to a lack of accountability. This exception provides for no oversight over contracts entered into by the General Services Department unless the vendor is listed on the statewide price agreement.”

Several agencies note positive aspects of SB206, particularly that many of the changes in SB206 simplify and speed up the process of procurement and may potentially make procurement more accessible to small businesses, less lengthy, and in the case where the state can negotiate lower prices for longer contracts, save the state money. The Department of Cultural Affairs (DCA) notes the increase in Section 12 of SB206, allowing agencies to buy up to \$60 thousand from a vendor by simply issuing a purchase order, could increase the competitiveness of smaller vendors while allowing agencies to make purchases with fewer quotes from vendors. Similarly, DCA notes the increase of raising the cap of small purchases not subject to central purchasing jurisdiction from \$1,500 to \$10 thousand would allow agencies to make small purchases quicker and reduce the volume of approvals for central purchasing staff.

Cultural Affairs and GSD also note that the changes in SB206 to allow a second chief procurement officer (CPO) appointment would improve efficiency by providing backup capacity to approve transactions. Changes to broaden acceptable continuing education for CPOs will help ensure that the requirements for continuing education are met. The Department of Information Technology (DoIT) also notes the agency flexibility provided by SB206, noting it could speed up the procurement process. (DoIT points out current GSD procurements can take up to 180 days.)

Section 6 of SB206 amends the exemption in Section 13-1-98(V) NMSA to confirm that the phrase “purchases of advertising in all media” does not include purchases of marketing services. Since 2016, LFC staff have flagged agencies’ use of this advertisement exemption to avoid conducting competitive procurement for marketing or public relations services. The Ethics Commission noted it is actively litigating this issue of statutory interpretation in state district court. *See Compl., State Ethics Comm’n v. Lindsey, et al.*, D-809-CV-2024-00091 (8th Jud. Dist. Ct., Jun. 20, 2024). The change in Section 6 of SB206 would appear to clarify the exemption to only include advertisements.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB206 relates to Senate Bill 217, which clarifies the Department of Information Technology's role in approving information technology projects.

TECHNICAL ISSUES

The State Ethics Commission notes that Section 2 of SB206 creates a new definition of public-private partnership agreement as “an agreement between at least one public partner and one private partner in which the public partner accepts a private contribution to the research, development, design, construction, financing, implementation, operation or maintenance of any public asset or public benefit.” It is not obvious from this definition what such agreements are (and are not)—*i.e.*, whether they are a species of professional services contracts that the government seeks to procure. Nor is it clear how the Procurement Code speaks to how such agreements are to be procured. Relatedly, the Procurement Code does not separately define “public partner” or “private partner.”

The change limiting sole source contracts to now more than four years is somewhat in conflict with the regulatory Model Accounting Practices (MAPs) set and enforced by the Department of Finance and Administration. MAPs states, “Sole source procurements cannot have a term more than 12 months. Any exception to this term must be granted by the State Controller. Such exemption entitles the agency to extend a sole source contract but only if the proper amendment and laws, rules and policies are followed.”

DoIT notes that Section 13-1-38.1 NMSA defines the chief procurement officer (CPO) role using the singular term “person.” To the extent that this implies an agency can only have one CPO, the proposed changes in Section 5 of the bill clarify that an agency can have up to two CPOs.

ALTERNATIVES

The State Ethics Commission recommends that, as the Legislature exempts more and more government procurement from procurement law, Section 13-1-98 perhaps should be amended to read that the “provisions of Section 13-1-102 [the Procurement Code] shall not apply to: . . .” That amendment would exempt the categories of procurement set forth in Section 13-1-98 from the requirement of a competitive, sealed process while leaving the anti-corruption and disclosure provisions of the Procurement Code applicable to that same set of government purchases and contracts.

LFC staff, in past program evaluations, have recommended that the statute providing for Procurement Code exemptions be limited to a specific dollar threshold. If the exemptions in SB206 are considered, the Legislature may want to combine them with cost limits, *i.e.*, exemptions for contracts for the digitization of state or federal records *up to ten thousand dollars (\$10,000)*.