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SENATE BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PROCUREMENT; ELIMINATING THE HEALTH CARE EXEMPTION
TO THE PROCUREMENT CODE; CLARIFYING THAT INVESTIGATION OF
ALLEGED HEALTH CARE OVERPAYMENTS OR FRAUD IS NOT AN EMERGENCY
CONDITION JUSTIFYING AN EMERGENCY PROCUREMENT; CLARIFYING THAT
SUSPENSION OF PAYMENTS TO HOSPITALS OR OTHER HEALTH CARE
PROVIDERS UPON A DETERMINATION OF CREDIBLE ALLEGATION OF FRAUD
IS NOT AN EMERGENCY CONDITION JUSTIFYING AN EMERGENCY
PROCUREMENT; REQUIRING A STATE AGENCY, AS AUTHORIZED BY LAW, TO
ANNUALLY CONTRACT THROUGH NORMAL PROCUREMENT FOR AUDIT SERVICES
TO INVESTIGATE ALLEGED HEALTH CARE OVERPAYMENTS OR FRAUD AND
FOR TEMPORARY ON-CALL HEALTH CARE OR OTHER SERVICES
NECESSITATED BY A SUSPENSION OF PAYMENTS PURSUANT TO
DETERMINATION OF CREDIBLE ALLEGATION OF FRAUD; GIVING THE
ATTORNEY GENERAL, STATE AUDITOR AND LEGISLATIVE FINANCE
COMMITTEE STANDING TO SEEK JUDICIAL REVIEW OF CERTAIN

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1 PURCHASING PRACTICES; REQUIRING THE STATE AUDITOR TO COMPILE
2 AND MAINTAIN A LIST OF AUDIT FIRMS APPROVED FOR STATE AND
3 FEDERAL HEALTH CARE PROGRAM AUDITS; MAKING AN APPROPRIATION;
4 DECLARING AN EMERGENCY.

5
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 SECTION 1. Section 12-6-1 NMSA 1978 (being Laws 1969,
8 Chapter 68, Section 1) is amended to read:

9 "12-6-1. SHORT TITLE.--~~[Sections 4-31-1 through 4-31-17~~
10 ~~NMSA 1953]~~ Chapter 12, Article 6 NMSA 1978 may be cited as the
11 "Audit Act"."

12 SECTION 2. A new section of the Audit Act is enacted to
13 read:

14 "[NEW MATERIAL] AUDITS OF STATE AND FEDERAL HEALTH CARE
15 PROGRAMS.--The state auditor shall compile and maintain a list
16 of audit firms approved by the state auditor to conduct audits
17 of state and federal health care programs."

18 SECTION 3. Section 13-1-98.1 NMSA 1978 (being Laws 1998,
19 Chapter 69, Section 1) is amended to read:

20 "13-1-98.1. HOSPITAL [~~AND HEALTH CARE~~] EXEMPTION.--The
21 provisions of the Procurement Code shall not apply to
22 procurement of items of tangible personal property or services
23 by a state agency or a local public body through [~~A.~~] an
24 agreement with any other state agency, local public body or
25 external procurement unit or any other person [~~corporation,~~

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1 ~~organization or association~~] that provides that the parties to
2 the agreement shall join together for the purpose of making
3 some or all purchases necessary for the operation of public
4 hospitals or public and private hospitals, if the state
5 purchasing agent, [~~or~~] a central purchasing office or a chief
6 procurement officer of a state agency makes a determination
7 that the arrangement will or is likely to reduce health care
8 costs [~~or~~

9 ~~B. an agreement with any other state agency, local~~
10 ~~public body or external procurement unit or any other person,~~
11 ~~corporation, organization or association for the purpose of~~
12 ~~creating a network of health care providers or jointly~~
13 ~~operating a common health care service, if the state purchasing~~
14 ~~agent or a central purchasing office makes a determination that~~
15 ~~the arrangement will or is likely to reduce health care costs,~~
16 ~~improve quality of care or improve access to care]."~~

17 SECTION 4. Section 13-1-126 NMSA 1978 (being Laws 1984,
18 Chapter 65, Section 99, as amended) is amended to read:

19 "13-1-126. SOLE SOURCE PROCUREMENT--STANDING TO SEEK
20 JUDICIAL REVIEW.--

21 A. A contract may be awarded without competitive
22 sealed bids or competitive sealed proposals regardless of the
23 estimated cost when the state purchasing agent, [~~or~~] a central
24 purchasing office or a chief procurement officer of a state
25 agency 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 or a chief procurement officer of a state
12 agency shall use due diligence in determining the basis for the
13 sole source procurement, including reviewing available sources
14 and consulting the using agency, and shall include [~~its~~] a
15 written determination in the procurement file.

16 C. The state purchasing agent, [~~or~~] a central
17 purchasing office or a chief procurement officer of a state
18 agency shall conduct negotiations, as appropriate, as to price,
19 delivery and quantity in order to obtain the price most
20 advantageous to the state agency or a local public body.

21 D. A contract for the purchase of research
22 consultant services by institutions of higher learning
23 constitutes a sole source procurement.

24 E. The state purchasing agent, [~~or~~] a central
25 purchasing office or a chief procurement officer of a state

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1 agency shall not circumvent this section by narrowly drafting
2 specifications so that only one predetermined source would
3 satisfy those specifications.

4 F. The attorney general, state auditor or
5 legislative finance committee may, pursuant to Sections
6 13-1-183 and 39-3-1.1 NMSA 1978, seek judicial review of
7 actions of the state purchasing agent, a central purchasing
8 office or a chief procurement officer of a state agency
9 contrary to the requirements of Subsections B, C and E of this
10 section."

11 SECTION 5. Section 13-1-127 NMSA 1978 (being Laws 1984,
12 Chapter 65, Section 100, as amended) is amended to read:

13 "13-1-127. EMERGENCY PROCUREMENTS--STANDING TO SEEK
14 JUDICIAL REVIEW.--

15 A. The state purchasing agent, [~~or~~] a central
16 purchasing office or a chief procurement officer of a state
17 agency may make emergency procurements when there exists a
18 threat to public health, welfare, safety or property requiring
19 procurement under emergency conditions; provided that emergency
20 procurements shall be made with competition as is practicable
21 under the circumstances.

22 B. An emergency condition is a situation that
23 creates a threat to public health, welfare or safety such as
24 may arise by reason of floods, fires, epidemics, riots, acts of
25 terrorism, equipment failures or similar events and includes

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1 the planning and preparing for an emergency response. The
2 existence of the emergency condition creates an immediate and
3 serious need for services, construction or items of tangible
4 personal property that cannot be met through normal procurement
5 methods and the lack of which would seriously threaten:

6 (1) the functioning of government;

7 (2) the preservation or protection of
8 property; or

9 (3) the health or safety of any person.

10 C. Emergency procurements shall not include:

11 (1) the purchase or lease purchase of heavy
12 road equipment;

13 (2) the purchase of professional services to
14 audit public or private hospitals or any health care provider
15 for alleged health care overpayments or fraud;

16 (3) the purchase or lease of goods or
17 equipment necessitated by a suspension of payments pursuant to
18 a determination made by the human services department of
19 credible allegation of fraud; or

20 (4) the purchase of health care services or
21 other professional services necessitated by a suspension of
22 payments pursuant to a determination made by the human services
23 department of credible allegation of fraud.

24 D. The state purchasing agent, [~~or~~] a central
25 purchasing office or a chief procurement officer of a state

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1 agency shall use due diligence in determining the basis for the
2 emergency procurement and for the selection of the particular
3 contractor. The determination shall be in writing and included
4 in the procurement file.

5 E. Money expended for planning and preparing for an
6 emergency response shall be accounted for and reported to the
7 legislative finance committee and the department of finance and
8 administration within sixty days after the end of each fiscal
9 year.

10 F. The attorney general, state auditor or
11 legislative finance committee may, pursuant to Sections
12 13-1-183 and 39-3-1.1 NMSA 1978, seek judicial review of
13 actions of the state purchasing agent, a central purchasing
14 office or a chief procurement officer of a state agency
15 contrary to the requirements of this section."

16 SECTION 6. A new section of the Procurement Code is
17 enacted to read:

18 "[NEW MATERIAL] PROCUREMENT TO INVESTIGATE ALLEGED HEALTH
19 CARE OVERPAYMENTS OR FRAUD OR NECESSITATED BY SUSPENSION OF
20 PAYMENTS PURSUANT TO A DETERMINATION OF CREDIBLE ALLEGATION OF
21 FRAUD--STANDING TO SEEK JUDICIAL REVIEW.--

22 A. As used in this section, "state agency" includes
23 the human services department, the department of health, the
24 interagency behavioral health purchasing collaborative and any
25 members of the interagency behavioral health purchasing

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1 collaborative.

2 B. As authorized by law, a state agency shall:

3 (1) contract annually, and in advance of the
4 need, for:

5 (a) audit or other professional services
6 to investigate alleged health care overpayments or fraud; and

7 (b) on-call temporary health care or
8 other professional services necessitated by a suspension of
9 payments pursuant to a determination of credible allegation of
10 fraud;

11 (2) contract through a competitive sealed
12 proposal process for such audit, on-call temporary health care
13 or other professional services pursuant to the Procurement
14 Code, and give a preference to a resident business as provided
15 by Section 13-1-21 NMSA 1978;

16 (3) not accept a proposal from any party for
17 health care or other professional services unless the offeror
18 and all persons providing services covered under the proposal
19 are registered, licensed or certified as required by law to
20 provide such services in New Mexico; and

21 (4) not accept a proposal for audit services
22 unless the offeror is approved by the state auditor to conduct
23 audits of state and federal health care programs.

24 C. Contracts for on-call temporary health care or
25 other professional services necessitated by a suspension of

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1 payments pursuant to a determination of credible allegation of
2 fraud shall be limited to three months or less and may not be
3 renewed or extended.

4 D. Each proposal to provide audit, on-call
5 temporary health care or other professional services shall,
6 within five business days of the award, be made public and
7 posted on the web site of the state agency awarding such
8 contract and on the sunshine portal.

9 E. The provisions of this section do not apply to
10 any procurement by the office of the attorney general or by the
11 state auditor to investigate alleged health care overpayments
12 or health care fraud.

13 F. The attorney general, state auditor or
14 legislative finance committee may, pursuant to Sections 13-1-183
15 and 39-3-1.1 NMSA 1978, seek judicial review of actions of the
16 state purchasing agent, a central purchasing office or a chief
17 procurement officer of a state agency contrary to the
18 requirements of this section."

19 **SECTION 7. APPROPRIATION.**--One hundred thousand dollars
20 (\$100,000) is appropriated from the general fund to the office
21 of the state auditor for expenditure in fiscal year 2015 to
22 compile and maintain a list of firms approved by the state
23 auditor to conduct audits of state and federal health care
24 programs. Any unexpended or unencumbered balance remaining at
25 the end of fiscal year 2015 shall revert to the general fund.

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SECTION 8. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect immediately.