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HOUSE BILL 88

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Luciano "Lucky" Varela

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

**RELATING TO PROCUREMENT; INCREASING THE AMOUNT OF EXCLUDED
SMALL PURCHASES; PROVIDING ADDITIONAL EXEMPTIONS; AUTHORIZING
ELECTRONIC NOTICES AND RESPONSES; PROVIDING LIMITATIONS;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.**

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

**Section 1. A new section of the Procurement Code is
enacted to read:**

**" NEW MATERIAL DEFINITION-- ELECTRONIC. -- "Electronic"
includes electric, digital, magnetic, optical, electronic or
similar medium "**

**Section 2. Section 13-1-77 NMSA 1978 (being Laws 1984,
Chapter 65, Section 50) is amended to read:**

**"13-1-77. DEFINITION-- PURCHASE ORDER. -- "Purchase order"
means the document issued by the state purchasing agent or a**

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1 central purchasing office [~~which~~] that directs a contractor to
2 deliver items of tangible personal property, services or
3 construction [~~pursuant to an existing contract~~]. "

4 Section 3. Section 13-1-98 NMSA 1978 (being Laws 1984,
5 Chapter 65, Section 71, as amended) is amended to read:

6 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE. --

7 A. The provisions of the Procurement Code shall
8 not apply to:

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

14 [~~B.-~~] (2) procurement of tangible personal
15 property or services for the governor's mansion and grounds;

16 [~~C.-~~] (3) printing and duplicating contracts
17 involving materials [~~which~~] that are required to be filed in
18 connection with proceedings before administrative agencies or
19 state or federal courts;

20 [~~D.-~~] (4) purchases of publicly provided or
21 publicly regulated gas, electricity, water, sewer and refuse
22 collection services;

23 [~~E.-~~] (5) purchases of books and periodicals
24 from the publishers or copyright holders thereof;

25 [~~F.-~~] (6) travel or shipping by common carrier

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1 or by private conveyance or to meals and lodging;

2 [G-] (7) purchase of livestock at auction
3 rings or to the procurement of animals to be used for research
4 and experimentation or exhibit;

5 [H-] (8) contracts with businesses for public
6 school transportation services;

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

14 [J-] (10) minor purchases not exceeding five
15 thousand dollars (\$5,000) consisting of magazine
16 subscriptions, conference registration fees and other similar
17 purchases where prepayments are required;

18 [K-] (11) municipalities having adopted home
19 rule charters and having enacted their own purchasing
20 ordinances;

21 [L-] (12) the issuance, sale and delivery of
22 public securities pursuant to the applicable authorizing
23 statute, with the exception of bond attorneys and general
24 financial consultants;

25 [M-] (13) contracts entered into by a local

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1 public body with a private independent contractor for the
2 operation, or provision and operation, of a jail pursuant to
3 Sections 33-3-26 and 33-3-27 NMSA 1978;

4 [N-] (14) contracts for maintenance of
5 grounds and facilities at highway rest stops and other
6 employment opportunities, excluding those intended for the
7 direct care and support of persons with handicaps, entered
8 into by state agencies with private, nonprofit, independent
9 contractors who provide services to persons with handicaps;

10 [Ø-] (15) contracts and expenditures for
11 services or items of tangible personal property to be paid or
12 compensated by money or other property transferred to New
13 Mexico law enforcement agencies by the United States
14 department of justice drug enforcement administration;

15 [P-] (16) contracts for retirement and other
16 benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA
17 1978;

18 [Ø-] (17) contracts with professional
19 entertainers; [and

20 R-] (18) contracts and expenditures for
21 litigation expenses in connection with proceedings before
22 administrative agencies or state or federal courts, including
23 experts, mediators, court reporters, process servers and
24 witness fees, but not including attorney contracts; and

25 (19) works of art for museums or for display

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1 in public buildings or places.

2 B. When procuring services and items of tangible
3 personal property exempted from the provisions of the
4 Procurement Code, state agencies and local public bodies shall
5 follow procurement practices that maximize the value of public
6 money. "

7 Section 4. Section 13-1-99 NMSA 1978 (being Laws 1984,
8 Chapter 65, Section 72, as amended) is amended to read:

9 "13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE
10 STATE PURCHASING AGENT. -- Excluded from the requirement of
11 procurement through the state purchasing agent but not from
12 the requirements of the Procurement Code are the following:

13 A. procurement of professional services;

14 B. small purchases having a value not exceeding
15 [~~two hundred fifty dollars (\$250)~~] one thousand dollars
16 (\$1,000);

17 C. emergency procurement;

18 D. procurement of highway construction or
19 reconstruction by the state highway and transportation
20 department;

21 E. procurement by the judicial branch of state
22 government;

23 F. procurement by the legislative branch of state
24 government;

25 G. procurement by the boards of regents of state

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1 educational institutions named in Article 12, Section 11 of
2 the constitution of New Mexico;

3 H. procurement by the state fair commission of
4 tangible personal property, services and construction under
5 five thousand dollars (\$5,000);

6 I. purchases from the instructional material fund;

7 J. procurement by all local public bodies;

8 K. procurement by regional education cooperatives;

9 L. procurement by charter schools; and

10 M. procurement by each state health care
11 institution that provides direct patient care and that is, or
12 a part of which is, medicaid certified and participating in
13 the New Mexico medicaid program. "

14 Section 5. Section 13-1-104 NMSA 1978 (being Laws 1984,
15 Chapter 65, Section 77, as amended) is amended to read:

16 "13-1-104. COMPETITIVE SEALED BIDS--PUBLIC NOTICE.--

17 A. An invitation for bids or a notice thereof
18 shall be published not less than ten calendar days prior to
19 the date set forth for the opening of bids. In the case of
20 purchases made by the state purchasing agent, the invitation
21 or notice shall be published at least once in at least three
22 newspapers of general circulation in this state; provided,
23 however, this requirement may be reduced to publication in one
24 newspaper of general circulation in the state if the
25 invitation or notice is published electronically on the state

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1 purchasing agent's web site that is maintained for that
2 purpose. In the case of purchases made by other central
3 purchasing offices, the invitation or notice shall be
4 published at least once in a newspaper of general circulation
5 in the area in which the central purchasing office is located.
6 These requirements of publication are in addition to any other
7 procedures [~~which~~] that may be adopted by central purchasing
8 offices to notify prospective bidders that bids will be
9 received, including [~~but not limited to~~] publication in a
10 trade journal, if available. If there is no newspaper of
11 general circulation in the area in which the central
12 purchasing office is located, such other notice may be given
13 as is commercially reasonable.

14 B. [~~The state purchasing agent and All~~] Central
15 purchasing offices shall send copies of the notice or
16 invitation for bids involving the expenditure of more than ten
17 thousand dollars (\$10,000) to those businesses [~~which~~] that
18 have signified in writing an interest in submitting bids for
19 particular categories of items of tangible personal property,
20 construction and services and [~~which~~] that have paid any
21 required fees. [~~The state purchasing agent or~~] A central
22 purchasing office may set different registration fees for
23 different categories of services, construction or items of
24 tangible personal property, but such fees shall be related to
25 the actual, direct cost of furnishing copies of the notice or

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1 invitation for bids to the prospective bidders. The fees
2 shall be used exclusively for the purpose of furnishing copies
3 of the notice or invitation for bids of proposed procurements
4 to prospective bidders.

5 C. A central purchasing office may satisfy the
6 requirement of sending copies of a notice or invitation for
7 bids by distributing the documents to prospective bidders
8 through electronic media. Central purchasing offices shall
9 not require that prospective bidders receive a notice or
10 invitation for bids through electronic media.

11 [~~C.~~] D. As used in this subsection, "prospective
12 bidders" includes persons considering submission of a bid as a
13 general contractor for the construction contract and persons
14 who may submit bids to a general contractor for work to be
15 subcontracted pursuant to the construction contract. [~~The~~
16 ~~state purchasing agent and All~~] Central purchasing offices
17 shall make copies of invitations for bids for construction
18 contracts available to prospective bidders. [~~The state~~
19 ~~purchasing agent or~~] A central purchasing office may require
20 prospective bidders who have requested documents for bid on a
21 construction contract to pay a deposit for a copy of the
22 documents for bid. The deposit shall equal the full cost of
23 reproduction and delivery of the documents for bid. The
24 deposit, less delivery charges, shall be refunded if the
25 documents for bid are returned in usable condition within the

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1 time limits specified in the documents for bid, which time
2 limits shall be no less than ten calendar days from the date
3 of the bid opening. All forfeited deposits shall be credited
4 to the funds of the [~~state purchasing agent or~~] applicable
5 central purchasing office [~~whichever is applicable~~]. "

6 Section 6. Section 13-1-125 NMSA 1978 (being Laws 1984,
7 Chapter 65, Section 98, as amended) is amended to read:

8 "13-1-125. SMALL PURCHASES. --

9 A. [~~The state purchasing agent or~~] A central
10 purchasing office shall procure services, construction or
11 items of tangible personal property having a value not
12 exceeding ten thousand dollars (\$10,000) in accordance with
13 the applicable small purchase regulations adopted by the
14 secretary, a local public body or a central purchasing office
15 that has the authority to issue regulations.

16 B. Notwithstanding the requirements of Subsection
17 A of this section, a central purchasing office may procure
18 professional services having a value not exceeding twenty
19 thousand dollars (\$20,000), excluding applicable state and
20 local gross receipts taxes, except for the services of
21 architects, landscape architects, engineers or surveyors for
22 state public works projects or local public works projects, in
23 accordance with professional services procurement regulations
24 promulgated by the department of finance and administration,
25 the general services department or a central purchasing office

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1 with the authority to issue regulations.

2 C. Notwithstanding the requirements of Subsection
3 A of this section, a state agency or a local public body may
4 procure services, construction or items of tangible personal
5 property having a value not exceeding [~~five hundred dollars~~
6 ~~(\$500)~~] one thousand dollars (\$1000) by issuing a direct
7 purchase order to a contractor based upon the best obtainable
8 price.

9 D. Procurement requirements shall not be
10 artificially divided so as to constitute a small purchase
11 under this section. "

12 Section 7. A new section of the Procurement Code is
13 enacted to read:

14 "[NEW MATERIAL] ELECTRONIC TRANSMISSIONS. --The state
15 purchasing agent shall work with the attorney general to
16 develop guidelines for central purchasing offices to use
17 electronic media, including acceptance of sealed bids and
18 requests for proposals that include electronic signatures.

19 The guidelines shall include:

20 A. appropriate security to prevent unauthorized
21 access to electronically submitted bids or proposals prior to
22 the date and time set for opening of bids or the deadline set
23 for receipt for proposals, including the electronic bidding,
24 approval and award process; and

25 B. accurate retrieval or conversion of electronic

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1 forms of information into a medium that permits inspection and
2 copying. "

3 Section 8. EFFECTIVE DATE. -- The effective date of the
4 provisions of this act is July 1, 2001.

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