

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 913

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO PROCUREMENT FOR PUBLIC WORKS PROJECTS; REQUIRING  
THAT A CONTRACT COMPLIANCE MONITOR BE UTILIZED FOR CERTAIN  
PROJECTS FOR THE CONSTRUCTION OF BUILDINGS; DECLARING AN  
EMERGENCY.

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

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

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

A. procurement of professional services, except for  
contract compliance services required by the provisions of  
Section 13-1-100.2 NMSA 1978;

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1           B. small purchases having a value not exceeding one  
2 thousand five hundred dollars (\$1,500);

3           C. emergency procurement;

4           D. procurement of highway construction or  
5 reconstruction by the state highway and transportation  
6 department;

7           E. procurement by the judicial branch of state  
8 government;

9           F. procurement by the legislative branch of state  
10 government;

11           G. procurement by the boards of regents of state  
12 educational institutions named in Article 12, Section 11 of the  
13 constitution of New Mexico;

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

17           I. purchases from the instructional material fund;

18           J. procurement by all local public bodies;

19           K. procurement by regional education cooperatives;

20           L. procurement by charter schools; and

21           M. procurement by each state health care  
22 institution that provides direct patient care and that is, or a  
23 part of which is, medicaid certified and participating in the  
24 New Mexico medicaid program."

25           Section 2. Section 13-1-100.1 NMSA 1978 (being Laws 1997,  
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1 Chapter 171, Section 3) is amended to read:

2 "13-1-100.1. CONSTRUCTION CONTRACTS-- CONSTRUCTION  
3 MANAGEMENT SERVICES. --

4 A. Unless a contract compliance services contract  
5 is required pursuant to Section 13-1-100.2 NMSA 1978, a  
6 construction management services contract may be entered into  
7 for any construction or state or local public works project  
8 when a state agency or local public body makes a determination  
9 that it is in the public's interest to utilize construction  
10 management services. Construction management services shall  
11 not duplicate and are in addition to the normal scope of  
12 separate architect or engineer contracts, the need for which  
13 may arise due to the complexity or unusual requirements of a  
14 project as requested by a state agency or local public body.

15 B. To [~~insure~~] ensure fair, uniform, clear and  
16 effective procedures that will strive for the delivery of a  
17 quality project, on time and within budget, the secretary, in  
18 conjunction with the appropriate and affected professional  
19 associations and contractors, shall promulgate regulations,  
20 which shall be adopted by the governing bodies of all using  
21 agencies and shall be followed by all using agencies when  
22 procuring construction management services as authorized in  
23 Subsection A of this section.

24 C. Except as provided in Section 13-1-100.2 NMSA  
25 1978, a state agency shall make the decision on a construction

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1 management services contract for a state public works project,  
2 and a local public body shall make that decision for a local  
3 public works project. Except as provided in Section 13-1-100.2  
4 NMSA 1978, a state agency shall not make the decision on a  
5 construction management services contract for a local public  
6 works project. "

7 Section 3. A new section of the Procurement Code, Section  
8 13-1-100.2 NMSA 1978, is enacted to read:

9 "13-1-100.2. [NEW MATERIAL] CONTRACT COMPLIANCE SERVICES  
10 REQUIRED--CERTAIN BUILDING CONSTRUCTION PROJECTS. --

11 A. Unless excluded pursuant to Subsection C of this  
12 section, no contract for the construction of a building shall  
13 be entered into by the state or a local public body unless a  
14 separate contract for contract compliance services with an  
15 independent contract compliance monitor is also entered into.  
16 The contract compliance monitor shall provide oversight, not  
17 construction management, as an agent of the using agency and of  
18 the state or the local public body in monitoring the  
19 construction project for the purpose of monitoring the time,  
20 cost and quality of the project to ensure conformance with the  
21 contract documents entered into between the contractor, the  
22 using agency and the state or local public body. In performing  
23 contract compliance services, a contract compliance monitor may  
24 employ such other licensed contractors and professionals,  
25 including architects, engineers and surveyors, as are

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1 necessary. The costs of the contract compliance monitor shall  
2 be paid from any funds available to the using agency.

3 B. Except as provided in Subsection D of this  
4 section, if the contract for the construction of the building  
5 is entered into by the state or an agency or institution of the  
6 state, the state purchasing agent shall, pursuant to the  
7 provisions of the Procurement Code, select a contract  
8 compliance monitor for each project subject to the provisions  
9 of this section.

10 C. The provisions of this section are not  
11 applicable to a contract for the construction of:

12 (1) a building if the projected state  
13 expenditure pursuant to the contract is less than one million  
14 dollars (\$1,000,000); provided, however, that if the state  
15 purchasing agent determines that the using agency of the state  
16 or local public body has other projects for the construction of  
17 buildings that will commence in the same fiscal year and if the  
18 projected state expenditure in the aggregate for all the  
19 projects is one million dollars (\$1,000,000) or more, then all  
20 of the projects are subject to the provisions of this section.  
21 As used in this paragraph, "state expenditure" means money  
22 appropriated by the legislature for the project, including  
23 direct appropriations from a specific fund, the use of  
24 severance tax bond proceeds, the use of state general  
25 obligation bond proceeds and the use of proceeds from bonds or

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1 loans issued or made by the New Mexico finance authority;

2 (2) public school buildings and facilities  
3 funded pursuant to the Public School Capital Outlay Act or the  
4 construction of which is overseen pursuant to that act; or

5 (3) single- or multi-family dwellings built  
6 pursuant to a federal or state housing program.

7 D. Excluded from the requirement to procure the  
8 services of a contract compliance monitor through the state  
9 purchasing agent but not from the requirement to procure the  
10 services of a contract compliance monitor are:

11 (1) agencies of the judicial branch of  
12 government;

13 (2) the boards of regents of the state  
14 educational institutions named in Article 12, Section 11 of the  
15 constitution of New Mexico;

16 (3) procurement by all local public bodies;

17 (4) procurement by regional education  
18 cooperatives; and

19 (5) procurement by charter schools.

20 E. As used in this section, "contract compliance  
21 monitor" means a person who is registered under the  
22 Architectural Act to practice architecture or licensed as a  
23 professional engineer and who:

24 (1) has the skills and background necessary to  
25 provide contract compliance services;

