

AN ACT

RELATING TO THE CONSERVATION OF RESOURCES; AMENDING THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT TO ALLOW FOR ADDITIONAL SURETIES TO GUARANTEE PERFORMANCE; AMENDING THE PROCUREMENT CODE TO CLARIFY THAT CERTAIN CONTRACTS MAY PROVIDE FOR BOTH DESIGN AND INSTALLATION.

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

Section 1. Section 6-23-4 NMSA 1978 (being Laws 1993, Chapter 231, Section 4, as amended) is amended to read:

"6-23-4. GUARANTEED UTILITY SAVINGS CONTRACT--
PERFORMANCE GUARANTEE REQUIRED.--A governmental unit shall not enter into a guaranteed utility savings contract unless a performance guarantee that meets the requirements of this section is delivered by the qualified provider to the governmental unit and that guarantee becomes binding on the parties upon the execution of the guaranteed utility savings contract. The qualified provider shall provide a performance guarantee in the form of a performance bond, a cash bond, a letter of credit issued by a bank with a Moody's or Standard and Poor's rating of "A" or better or any other surety, including insurance, satisfactory to the governmental unit and its approving agency. The guarantee for each year shall be in an amount equal to the amount of the annual guarantee given by the qualified provider in the guaranteed utility savings

contract."

Section 2. Section 13-1-111 NMSA 1978 (being Laws 1984, Chapter 65, Section 84, as amended) is amended to read:

"13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR USE.--

A. Except as provided in Subsection G of Section 13-1-119.1 NMSA 1978, when a state agency or a local public body is procuring professional services or a design and build project delivery system, or when the state purchasing agent, a central purchasing office or a designee of either officer makes a written determination that the use of competitive sealed bidding for items of tangible personal property or services is either not practicable or not advantageous to the state agency or a local public body, a procurement shall be effected by competitive sealed proposals.

B. Competitive sealed proposals may also be used for contracts for construction and facility maintenance, service and repairs.

C. Competitive qualifications-based proposals shall be used for procurement of professional services of architects, engineers, landscape architects, construction managers and surveyors who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978.

D. Competitive sealed proposals shall also be used for contracts for the design and installation of measures the

primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act.

E. The governor shall appoint an advisory committee to provide assistance in development of rules for the implementation of this section. The advisory committee shall include one representative from the New Mexico building and construction trades council, American federation of labor - congress for industrial organizations, and a representative of:

(1) the associated general contractors - New Mexico building branch;

(2) the New Mexico chapter of the national electrical contractors association;

(3) the New Mexico sheet metal contractors association;

(4) the mechanical contractors association of New Mexico;

(5) the New Mexico association of counties;

(6) the New Mexico municipal league;

(7) the public education department;

(8) the construction industries commission;

(9) the Rio Grande underground contractors association;

