

1 AN ACT  
2 RELATING TO PROCUREMENT; EXEMPTING FROM THE PROCUREMENT CODE  
3 PROCUREMENTS OTHERWISE EXEMPTED UNDER OTHER LAW; REQUIRING  
4 ADDITIONAL PROCEDURES FOR SOLE SOURCE AND EMERGENCY  
5 PROCUREMENT; RESTRICTING WHO MAY MAKE EMERGENCY PROCUREMENTS;  
6 EXPANDING WHO MAY PROTEST A PROCUREMENT AWARD; INCREASING  
7 PENALTIES FOR VIOLATING THE PROCUREMENT CODE.

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

10 SECTION 1. Section 13-1-98 NMSA 1978 (being Laws 1984,  
11 Chapter 65, Section 71, as amended) is amended to read:

12 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The  
13 provisions of the Procurement Code shall not apply to:

14 A. procurement of items of tangible personal  
15 property or services by a state agency or a local public body  
16 from a state agency, a local public body or external  
17 procurement unit except as otherwise provided in  
18 Sections 13-1-135 through 13-1-137 NMSA 1978;

19 B. procurement of tangible personal property or  
20 services for the governor's mansion and grounds;

21 C. printing and duplicating contracts involving  
22 materials that are required to be filed in connection with  
23 proceedings before administrative agencies or state or  
24 federal courts;

25 D. purchases of publicly provided or publicly

1 regulated gas, electricity, water, sewer and refuse  
2 collection services;

3 E. purchases of books and periodicals from the  
4 publishers or copyright holders thereof;

5 F. travel or shipping by common carrier or by  
6 private conveyance or to meals and lodging;

7 G. purchase of livestock at auction rings or to  
8 the procurement of animals to be used for research and  
9 experimentation or exhibit;

10 H. contracts with businesses for public school  
11 transportation services;

12 I. procurement of tangible personal property or  
13 services, as defined by Sections 13-1-87 and 13-1-93 NMSA  
14 1978, by the corrections industries division of the  
15 corrections department pursuant to rules adopted by the  
16 corrections industries commission, which shall be reviewed by  
17 the purchasing division of the general services department  
18 prior to adoption;

19 J. minor purchases not exceeding five thousand  
20 dollars (\$5,000) consisting of magazine subscriptions,  
21 conference registration fees and other similar purchases  
22 where prepayments are required;

23 K. municipalities having adopted home rule  
24 charters and having enacted their own purchasing ordinances;

25 L. the issuance, sale and delivery of public

1 securities pursuant to the applicable authorizing statute,  
2 with the exception of bond attorneys and general financial  
3 consultants;

4 M. contracts entered into by a local public body  
5 with a private independent contractor for the operation, or  
6 provision and operation, of a jail pursuant to  
7 Sections 33-3-26 and 33-3-27 NMSA 1978;

8 N. contracts for maintenance of grounds and  
9 facilities at highway rest stops and other employment  
10 opportunities, excluding those intended for the direct care  
11 and support of persons with handicaps, entered into by state  
12 agencies with private, nonprofit, independent contractors who  
13 provide services to persons with handicaps;

14 O. contracts and expenditures for services or  
15 items of tangible personal property to be paid or compensated  
16 by money or other property transferred to New Mexico law  
17 enforcement agencies by the United States department of  
18 justice drug enforcement administration;

19 P. contracts for retirement and other benefits  
20 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

21 Q. contracts with professional entertainers;

22 R. contracts and expenditures for litigation  
23 expenses in connection with proceedings before administrative  
24 agencies or state or federal courts, including experts,  
25 mediators, court reporters, process servers and witness fees,

1 but not including attorney contracts;

2 S. contracts for service relating to the design,  
3 engineering, financing, construction and acquisition of  
4 public improvements undertaken in improvement districts  
5 pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and  
6 in county improvement districts pursuant to Subsection L of  
7 Section 4-55A-12.1 NMSA 1978;

8 T. works of art for museums or for display in  
9 public buildings or places;

10 U. contracts entered into by a local public body  
11 with a person, firm, organization, corporation or association  
12 or a state educational institution named in Article 12,  
13 Section 11 of the constitution of New Mexico for the  
14 operation and maintenance of a hospital pursuant to  
15 Chapter 3, Article 44 NMSA 1978, lease or operation of a  
16 county hospital pursuant to the Hospital Funding Act or  
17 operation and maintenance of a hospital pursuant to the  
18 Special Hospital District Act;

19 V. purchases of advertising in all media,  
20 including radio, television, print and electronic;

21 W. purchases of promotional goods intended for  
22 resale by the tourism department;

23 X. procurement of printing services for materials  
24 produced and intended for resale by the cultural affairs  
25 department;

1           Y. procurement by or through the public education  
2 department from the federal department of education relating  
3 to parent training and information centers designed to  
4 increase parent participation, projects and initiatives  
5 designed to improve outcomes for students with disabilities  
6 and other projects and initiatives relating to the  
7 administration of improvement strategy programs pursuant to  
8 the federal Individuals with Disabilities Education Act;  
9 provided that the exemption applies only to procurement of  
10 services not to exceed two hundred thousand dollars  
11 (\$200,000);

12           Z. procurement of services from community  
13 rehabilitation programs or qualified individuals pursuant to  
14 the State Use Act;

15           AA. purchases of products or services for eligible  
16 persons with disabilities pursuant to the federal  
17 Rehabilitation Act of 1973;

18           BB. procurement, by either the department of  
19 health or Grant county or both, of tangible personal  
20 property, services or construction that are exempt from the  
21 Procurement Code pursuant to Section 9-7-6.5 NMSA 1978;

22           CC. contracts for investment advisory services,  
23 investment management services or other investment-related  
24 services entered into by the educational retirement board,  
25 the state investment officer or the retirement board created

1 pursuant to the Public Employees Retirement Act;

2 DD. the purchase for resale by the state fair  
3 commission of feed and other items necessary for the upkeep  
4 of livestock;

5 EE. contracts entered into by the crime victims  
6 reparation commission to distribute federal grants to assist  
7 victims of crime, including grants from the federal Victims  
8 of Crime Act of 1984 and the federal Violence Against Women  
9 Act; and

10 FF. procurements exempt from the Procurement Code  
11 as otherwise provided by law."

12 SECTION 2. Section 13-1-126 NMSA 1978 (being Laws 1984,  
13 Chapter 65, Section 99, as amended) is amended to read:

14 "13-1-126. SOLE SOURCE PROCUREMENT.--

15 A. A contract may be awarded without competitive  
16 sealed bids or competitive sealed proposals regardless of the  
17 estimated cost when the state purchasing agent or a central  
18 purchasing office determines, in writing, that:

19 (1) there is only one source for the  
20 required service, construction or item of tangible personal  
21 property;

22 (2) the service, construction or item of  
23 tangible personal property is unique and this uniqueness is  
24 substantially related to the intended purpose of the  
25 contract; and

1 (3) other similar services, construction or  
2 items of tangible personal property cannot meet the intended  
3 purpose of the contract.

4 B. The state purchasing agent or a central  
5 purchasing office shall use due diligence in determining the  
6 basis for the sole source procurement, including reviewing  
7 available sources and consulting the using agency, and shall  
8 include its written determination in the procurement file.

9 C. The state purchasing agent or a central  
10 purchasing office shall conduct negotiations, as appropriate,  
11 as to price, delivery and quantity in order to obtain the  
12 price most advantageous to the state agency or a local public  
13 body.

14 D. A contract for the purchase of research  
15 consultant services by institutions of higher learning  
16 constitutes a sole source procurement.

17 E. The state purchasing agent or a central  
18 purchasing office shall not circumvent this section by  
19 narrowly drafting specifications so that only one  
20 predetermined source would satisfy those specifications."

21 SECTION 3. Section 13-1-127 NMSA 1978 (being Laws 1984,  
22 Chapter 65, Section 100, as amended) is amended to read:

23 "13-1-127. EMERGENCY PROCUREMENTS.--

24 A. The state purchasing agent or a central  
25 purchasing office may make emergency procurements when there

1 exists a threat to public health, welfare, safety or property  
2 requiring procurement under emergency conditions; provided  
3 that emergency procurements shall be made with competition as  
4 is practicable under the circumstances.

5 B. An emergency condition is a situation that  
6 creates a threat to public health, welfare or safety such as  
7 may arise by reason of floods, fires, epidemics, riots, acts  
8 of terrorism, equipment failures or similar events and  
9 includes the planning and preparing for an emergency  
10 response. The existence of the emergency condition creates  
11 an immediate and serious need for services, construction or  
12 items of tangible personal property that cannot be met  
13 through normal procurement methods and the lack of which  
14 would seriously threaten:

15 (1) the functioning of government;

16 (2) the preservation or protection of  
17 property; or

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

19 C. Emergency procurements shall not include the  
20 purchase or lease purchase of heavy road equipment.

21 D. The state purchasing agent or a central  
22 purchasing office shall use due diligence in determining the  
23 basis for the emergency procurement and for the selection of  
24 the particular contractor. The determination shall be in  
25 writing and included in the procurement file.



1           E. Money expended for planning and preparing for  
2 an emergency response shall be accounted for and reported to  
3 the legislative finance committee and the department of  
4 finance and administration within sixty days after the end of  
5 each fiscal year."

6           SECTION 4. Section 13-1-128 NMSA 1978 (being Laws 1984,  
7 Chapter 65, Section 101, as amended) is amended to read:

8           "13-1-128. SOLE SOURCE AND EMERGENCY PROCUREMENTS--  
9 PUBLICATION OF AWARD TO AGENCY WEB SITE AND SUNSHINE PORTAL--  
10 CONTENT AND SUBMISSION OF RECORD.--

11           A. Prior to award of a sole source procurement  
12 contract, the state purchasing agent or central purchasing  
13 office shall:

14                       (1) provide the information described in  
15 Subsection E of this section to the department of information  
16 technology for posting on the sunshine portal; and

17                       (2) forward the same information to the  
18 legislative finance committee.

19           B. Prior to the award of a sole source procurement  
20 contract, the local public body central purchasing office  
21 shall post the information described in Subsection E of this  
22 section on the local public body web site, if one exists.

23           C. Within three business days of awarding an  
24 emergency procurement contract, the awarding central  
25 purchasing office within a state agency shall:

1 (1) provide the information described in  
2 Subsection E of this section to the department of information  
3 technology for posting on the sunshine portal; and

4 (2) forward the same information to the  
5 legislative finance committee.

6 D. Within three business days of awarding an  
7 emergency procurement contract, the local public body central  
8 purchasing office shall post the information described in  
9 Subsection E of this section on the local public body web  
10 site, if one exists.

11 E. All central purchasing offices shall maintain,  
12 for a minimum of three years, records of sole source and  
13 emergency procurements. The record of each such procurement  
14 shall be public record and shall contain:

15 (1) the contractor's name and address;

16 (2) the amount and term of the contract;

17 (3) a listing of the services, construction  
18 or items of tangible personal property procured under the  
19 contract;

20 (4) whether the contract was a sole source  
21 or emergency procurement contract; and

22 (5) the justification for the procurement  
23 method."

24 SECTION 5. Section 13-1-199 NMSA 1978 (being Laws 1984,  
25 Chapter 65, Section 172) is amended to read:

1 "13-1-199. PENALTIES.--Any business or person that  
2 willfully violates the Procurement Code is guilty of:

3 A. a misdemeanor if the transaction involves fifty  
4 thousand dollars (\$50,000) or less; or

5 B. a fourth degree felony if the transaction  
6 involves more than fifty thousand dollars (\$50,000)."

7 SECTION 6. A new section of the Procurement Code is  
8 enacted to read:

9 "SOLE SOURCE CONTRACTS--NOTICE--PROTEST.--

10 A. At least thirty days before a sole source  
11 contract is awarded, the state purchasing agent, a central  
12 purchasing office or a designee of either shall post notice  
13 of the intent to award a sole source contract on its web  
14 site. If a central purchasing office does not maintain a web  
15 site, it shall post the notice on the state purchasing  
16 agent's web site. The notice shall identify at a minimum:

17 (1) the parties to the proposed contract;

18 (2) the nature and quantity of the service,  
19 construction or item of tangible personal property being  
20 contracted for; and

21 (3) the contract amount.

22 B. Any qualified potential contractor who was not  
23 awarded a sole source contract may protest to the state  
24 purchasing agent or a central purchasing office. The protest  
25 shall be submitted in writing within fifteen calendar days of

1 the notice of intent to award a contract being posted by the  
2 state purchasing agent or a central purchasing office."

3 SECTION 7. A new section of the Procurement Code is  
4 enacted to read:

5 "COMPETITIVE SEALED BIDS AND PROPOSALS--RECORD  
6 MAINTENANCE.--A central purchasing office shall maintain, for  
7 a minimum of three years, all records relating to the award of  
8 a contract through a competitive sealed bid or competitive  
9 sealed proposal process."

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