

1 HOUSE BILL 278

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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7
8 FOR THE LEGISLATIVE FINANCE COMMITTEE

9
10 AN ACT

11 RELATING TO PROCUREMENT; REQUIRING NOTICE OF PROCUREMENTS THAT
12 ARE EXEMPT FROM THE PROCUREMENT CODE; DIRECTING THE LEGISLATIVE
13 FINANCE COMMITTEE AND THE GENERAL SERVICES DEPARTMENT TO REVIEW
14 EXEMPT PROCUREMENTS AND TO MAKE RECOMMENDATIONS TO THE
15 LEGISLATURE; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978;
16 ENACTING A DELAYED REPEAL OF EXEMPTIONS FROM THE PROCUREMENT
17 CODE.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

22 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--

23 A. Subject to the provisions of Subsection B of
24 this section, the provisions of the Procurement Code shall not
25 apply to:

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1 [A-] (1) procurement of items of tangible
2 personal property or services by a state agency or a local
3 public body from a state agency, a local public body or
4 external procurement unit except as otherwise provided in
5 Sections 13-1-135 through 13-1-137 NMSA 1978;

6 [B-] (2) procurement of tangible personal
7 property or services for the governor's mansion and grounds;

8 [G-] (3) printing and duplicating contracts
9 involving materials that are required to be filed in connection
10 with proceedings before administrative agencies or state or
11 federal courts;

12 [D-] (4) purchases of publicly provided or
13 publicly regulated gas, electricity, water, sewer and refuse
14 collection services;

15 [E-] (5) purchases of books, periodicals and
16 training materials in printed or electronic format from the
17 publishers or copyright holders thereof;

18 [F-] (6) travel or shipping by common carrier
19 or by private conveyance or to meals and lodging;

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

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

25 [I-] (9) procurement of tangible personal

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1 property or services, as defined by Sections 13-1-87 and
2 13-1-93 NMSA 1978, by the corrections industries division of
3 the corrections department pursuant to rules adopted by the
4 corrections industries commission, which shall be reviewed
5 by the purchasing division of the general services department
6 prior to adoption;

7 [~~J-~~] (10) purchases not exceeding ten thousand
8 dollars (\$10,000) consisting of magazine subscriptions, web-
9 based or electronic subscriptions, conference registration fees
10 and other similar purchases where prepayments are required;

11 [~~K-~~] (11) municipalities having adopted home
12 rule charters and having enacted their own purchasing
13 ordinances;

14 [~~L-~~] (12) the issuance, sale and delivery of
15 public securities pursuant to the applicable authorizing
16 statute, with the exception of bond attorneys and general
17 financial consultants;

18 [~~M-~~] (13) contracts entered into by a local
19 public body with a private independent contractor for the
20 operation, or provision and operation, of a jail pursuant to
21 Sections 33-3-26 and 33-3-27 NMSA 1978;

22 [~~N-~~] (14) contracts for maintenance of grounds
23 and facilities at highway rest stops and other employment
24 opportunities, excluding those intended for the direct care and
25 support of persons with handicaps, entered into by state

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1 agencies with private, nonprofit, independent contractors who
2 provide services to persons with handicaps;

3 [Θ-] (15) contracts and expenditures for
4 services or items of tangible personal property to be paid or
5 compensated by money or other property transferred to New
6 Mexico law enforcement agencies by the United States department
7 of justice drug enforcement administration;

8 [P-] (16) contracts for retirement and other
9 benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA
10 1978;

11 [Q-] (17) contracts with professional
12 entertainers;

13 [R-] (18) contracts and expenditures for legal
14 subscription and research services and litigation expenses in
15 connection with proceedings before administrative agencies or
16 state or federal courts, including experts, mediators, court
17 reporters, process servers and witness fees, but not including
18 attorney contracts;

19 [S-] (19) contracts for service relating to
20 the design, engineering, financing, construction and
21 acquisition of public improvements undertaken in improvement
22 districts pursuant to Subsection L of Section 3-33-14.1 NMSA
23 1978 and in county improvement districts pursuant to Subsection
24 L of Section 4-55A-12.1 NMSA 1978;

25 [T-] (20) works of art for museums or for

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1 display in public buildings or places;

2 [U-] (21) contracts entered into by a local
3 public body with a person, firm, organization, corporation or
4 association or a state educational institution named in Article
5 12, Section 11 of the constitution of New Mexico for the
6 operation and maintenance of a hospital pursuant to Chapter 3,
7 Article 44 NMSA 1978, lease or operation of a county hospital
8 pursuant to the Hospital Funding Act or operation and
9 maintenance of a hospital pursuant to the Special Hospital
10 District Act;

11 [V-] (22) purchases of advertising in all
12 media, including radio, television, print and electronic;

13 [W-] (23) purchases of promotional goods
14 intended for resale by the tourism department;

15 [X-] (24) procurement of printing services for
16 materials produced and intended for resale by the cultural
17 affairs department;

18 [Y-] (25) procurement by or through the public
19 education department from the federal department of education
20 relating to parent training and information centers designed to
21 increase parent participation, projects and initiatives
22 designed to improve outcomes for students with disabilities and
23 other projects and initiatives relating to the administration
24 of improvement strategy programs pursuant to the federal
25 Individuals with Disabilities Education Act; provided that the

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1 exemption applies only to procurement of services not to exceed
2 two hundred thousand dollars (\$200,000);

3 ~~[Z.]~~ (26) procurement of services from
4 community rehabilitation programs or qualified individuals
5 pursuant to the State Use Act;

6 ~~[AA.]~~ (27) purchases of products or services
7 for eligible persons with disabilities pursuant to the federal
8 Rehabilitation Act of 1973;

9 ~~[BB.]~~ (28) procurement, by either the
10 department of health or Grant county or both, of tangible
11 personal property, services or construction that are exempt
12 from the Procurement Code pursuant to Section 9-7-6.5 NMSA
13 1978;

14 ~~[GG.]~~ (29) contracts for investment advisory
15 services, investment management services or other investment-
16 related services entered into by the educational retirement
17 board, the state investment officer or the retirement board
18 created pursuant to the Public Employees Retirement Act;

19 ~~[DD.]~~ (30) the purchase for resale by the
20 state fair commission of feed and other items necessary for the
21 upkeep of livestock;

22 ~~[EE.]~~ (31) contracts entered into by the crime
23 victims reparation commission to distribute federal grants to
24 assist victims of crime, including grants from the federal
25 Victims of Crime Act of 1984 and the federal Violence Against

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1 Women Act of 1994;

2 [FF-] (32) procurement by or through the
3 children, youth and families department of pre-kindergarten
4 services purchased pursuant to the Pre-Kindergarten Act;

5 [GG-] (33) procurement of services of
6 commissioned advertising sales representatives for New Mexico
7 magazine; [and]

8 (34) a procurement of items of tangible
9 personal property or services by a state agency or a local
10 public body through an agreement with any other state agency,
11 local public body or external procurement unit or any other
12 person, corporation, organization or association that provides
13 that the parties to the agreement shall join together for the
14 purpose of making some or all purchases necessary for the
15 operation of public hospitals or public and private hospitals,
16 if the state purchasing agent or a central purchasing office
17 makes a determination that the arrangement will or is likely to
18 reduce health care costs;

19 (35) a procurement of items of tangible
20 personal property or services by a state agency or a local
21 public body through an agreement with any other state agency,
22 local public body or external procurement unit or any other
23 person, corporation, organization or association for the
24 purpose of creating a network of health care providers or
25 jointly operating a common health care service, if the state

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1 purchasing agent or a central purchasing office makes a
2 determination that the arrangement will or is likely to reduce
3 health care costs, improve quality of care or improve access to
4 care;

5 (36) contracts entered into by a local public
6 body with a person, firm, organization, corporation,
7 association or state educational institution named in Article
8 12, Section 11 of the constitution of New Mexico for:

9 (a) the operation and maintenance of a
10 hospital pursuant to Chapter 3, Article 44 NMSA 1978;

11 (b) the lease or operation of a county
12 hospital pursuant to the Hospital Funding Act;

13 (c) the operation and maintenance of a
14 hospital pursuant to the Special Hospital District Act; or

15 (d) the use of county buildings pursuant
16 to Section 4-38-13.1 NMSA 1978; and

17 ~~[HH-]~~ (37) procurements exempt from the
18 Procurement Code as otherwise provided by law.

19 B. To benefit from an exemption described in
20 Subsection A of this section, at least thirty days prior to
21 entering into an exempt procurement, a state agency or local
22 public body shall post a notice of its intent to enter into an
23 exempt procurement on the sunshine portal. The notice shall
24 describe the procurement as exempt from the Procurement Code and
25 identify at a minimum:

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1 (1) the parties to the proposed procurement;

2 (2) the nature and quantity of the services,
3 construction or items of tangible personal property to be
4 procured; and

5 (3) the cost of the service, construction or
6 items of tangible personal property to be procured.

7 C. The provisions of Subsection B of this section
8 are applicable to Procurement Code exemptions contained in other
9 laws and exempted pursuant to Paragraph (37) of Subsection A of
10 this section."

11 **SECTION 2. TEMPORARY PROVISION.**--The legislative finance
12 committee and the general services department shall review the
13 exemptions to the Procurement Code listed in Section 13-1-98
14 NMSA 1978 and other exemptions to the Procurement Code provided
15 by law and together provide recommendations and report to the
16 appropriate interim legislative committee prior to December 31,
17 2018.

18 **SECTION 3. REPEAL.**--Sections 13-1-98.1 and 13-1-98.2 NMSA
19 1978 (being Laws 1998, Chapter 69, Section 1 and Laws 2003,
20 Chapter 187, Section 1, as amended) are repealed.

21 **SECTION 4. DELAYED REPEAL.**--Section 13-1-98 NMSA 1978
22 (being Laws 1984, Chapter 65, Section 71, as amended) is
23 repealed effective July 1, 2019.

24 **SECTION 5. EFFECTIVE DATE.**--The effective date of the
25 provisions of this act is July 1, 2017.

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