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SENATE BILL 63

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Timothy M. Keller

AN ACT

RELATING TO PROCUREMENT; REQUIRING THE PURCHASING DIVISION OF
THE GENERAL SERVICES DEPARTMENT TO SET A PROCUREMENT
REQUIREMENT FOR A MINIMUM PERCENTAGE OF THE TOTAL DOLLAR AMOUNT
OF FOOD PURCHASED BY STATE AGENCIES AND LOCAL PUBLIC BODIES TO
BE FOOD PRODUCED IN NEW MEXICO; REQUIRING A BIENNIAL PROGRESS
REPORT.

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] COMPETITIVE SEALED BIDS FOR FOOD
PURCHASES--MINIMUM PERCENTAGE REQUIREMENT--SATISFACTION OF
MINIMUM PERCENTAGE REQUIREMENT BY STATE AGENCIES AND LOCAL
PUBLIC BODIES--PROGRESS REPORT.--

A. For purposes of this section, "food" means any

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1 solid or liquid substance intended for human consumption by
2 eating or drinking.

3 B. All competitive sealed bids for the procurement
4 of food purchased by state agencies or local public bodies
5 shall include a minimum percentage of the total dollar amount
6 of food purchased in New Mexico from food producers or
7 processors whose principal place of business is in New Mexico.
8 The minimum percentage requirement shall be no less than:

- 9 (1) two percent by July 1, 2012;
10 (2) five percent by July 1, 2014; and
11 (3) ten percent by July 1, 2016.

12 C. All bidders making competitive sealed bids for a
13 contract to sell food to state agencies or local public bodies
14 shall, at the dates specified in Subsection B of this section,
15 satisfy the minimum percentage requirement for competitive
16 sealed bids for the procurement of food purchased by state
17 agencies or local public bodies.

18 D. The purchasing division of the general services
19 department shall set a procurement requirement for a minimum
20 percentage of the total dollar amount of food purchased by
21 state agencies or local public bodies to be food purchased in
22 New Mexico from food producers or processors whose principal
23 place of business is in New Mexico. The minimum percentage
24 requirement shall be set at no less than:

- 25 (1) two percent by July 1, 2012;

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1 (2) five percent by July 1, 2014; and

2 (3) ten percent by July 1, 2016.

3 E. State agencies and local public bodies shall, at
4 the dates specified in Subsection D of this section, satisfy
5 the minimum percentage requirement for the procurement of food
6 produced or processed in New Mexico.

7 F. No later than December 1, 2011, and every
8 subsequent December 1 of an odd-numbered year, the New Mexico
9 department of agriculture shall prepare a biennial report on
10 the progress toward and success of each public agency and local
11 public body in reaching the minimum percentage requirement.
12 The New Mexico department of agriculture shall distribute each
13 report to the legislative finance committee, the appropriate
14 interim legislative committees and the cabinet secretaries and
15 shall post the report on the sunshine portal. Public agencies,
16 local public bodies and the purchasing division of the general
17 services department shall provide the New Mexico department of
18 agriculture with all the information relevant to the minimum
19 percentage requirement requested by the New Mexico department
20 of agriculture."

21 **SECTION 2.** Section 13-1-98 NMSA 1978 (being Laws 1984,
22 Chapter 65, Section 71, as amended) is amended to read:

23 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
24 provisions of the Procurement Code shall not apply to:

25 A. procurement of items of tangible personal

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1 property or services by a state agency or a local public body
2 from a state agency, a local public body or external
3 procurement unit except as otherwise provided in Sections
4 13-1-135 through 13-1-137 NMSA 1978;

5 B. except as provided by Section 1 of this 2011
6 act, procurement of tangible personal property or services for
7 the governor's mansion and grounds;

8 C. printing and duplicating contracts involving
9 materials that are required to be filed in connection with
10 proceedings before administrative agencies or state or federal
11 courts;

12 D. purchases of publicly provided or publicly
13 regulated gas, electricity, water, sewer and refuse collection
14 services;

15 E. purchases of books and periodicals from the
16 publishers or copyright holders thereof;

17 F. travel or shipping by common carrier or by
18 private conveyance or to meals and lodging;

19 G. purchase of livestock at auction rings or to the
20 procurement of animals to be used for research and
21 experimentation or exhibit;

22 H. contracts with businesses for public school
23 transportation services;

24 I. except as provided by Section 1 of this 2011
25 act, procurement of tangible personal property or services, as

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

6 J. minor purchases not exceeding five thousand
7 dollars (\$5,000) consisting of magazine subscriptions,
8 conference registration fees and other similar purchases where
9 prepayments are required;

10 K. except as provided by Section 1 of this 2011
11 act, municipalities having adopted home rule charters and
12 having enacted their own purchasing ordinances;

13 L. the issuance, sale and delivery of public
14 securities pursuant to the applicable authorizing statute, with
15 the exception of bond attorneys and general financial
16 consultants;

17 M. except as provided by Section 1 of this 2011
18 act, contracts entered into by a local public body with a
19 private independent contractor for the operation, or provision
20 and operation, of a jail pursuant to Sections 33-3-26 and
21 33-3-27 NMSA 1978;

22 N. contracts for maintenance of grounds and
23 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 O. contracts and expenditures for services or items
4 of tangible personal property to be paid or compensated by
5 money or other property transferred to New Mexico law
6 enforcement agencies by the United States department of justice
7 drug enforcement administration;

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

10 Q. contracts with professional entertainers;

11 R. contracts and expenditures for litigation
12 expenses in connection with proceedings before administrative
13 agencies or state or federal courts, including experts,
14 mediators, court reporters, process servers and witness fees,
15 but not including attorney contracts;

16 S. contracts for service relating to the design,
17 engineering, financing, construction and acquisition of public
18 improvements undertaken in improvement districts pursuant to
19 Subsection L of Section 3-33-14.1 NMSA 1978 and in county
20 improvement districts pursuant to Subsection L of Section
21 4-55A-12.1 NMSA 1978;

22 T. works of art for museums or for display in
23 public buildings or places;

24 U. except as provided by Section 1 of this 2011
25 act, contracts entered into by a local public body with a

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1 person, firm, organization, corporation or association or a
2 state educational institution named in Article 12, Section 11
3 of the constitution of New Mexico for the operation and
4 maintenance of a hospital pursuant to Chapter 3, Article 44
5 NMSA 1978, lease or operation of a county hospital pursuant to
6 the Hospital Funding Act or operation and maintenance of a
7 hospital pursuant to the Special Hospital District Act;

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

10 W. purchases of promotional goods intended for
11 resale by the tourism department;

12 X. procurement of printing services for materials
13 produced and intended for resale by the cultural affairs
14 department;

15 Y. procurement by or through the public education
16 department from the federal department of education relating to
17 parent training and information centers designed to increase
18 parent participation, projects and initiatives designed to
19 improve outcomes for students with disabilities and other
20 projects and initiatives relating to the administration of
21 improvement strategy programs pursuant to the federal
22 Individuals with Disabilities Education Act; provided that the
23 exemption applies only to procurement of services not to exceed
24 two hundred thousand dollars (\$200,000);

25 Z. procurement of services from community

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1 rehabilitation programs or qualified individuals pursuant to
2 the State Use Act;

3 AA. purchases of products or services for eligible
4 persons with disabilities pursuant to the federal
5 Rehabilitation Act of 1973;

6 BB. except as provided by Section 1 of this 2011
7 act, procurement, by either the department of health or Grant
8 county or both, of tangible personal property, services or
9 construction that are exempt from the Procurement Code pursuant
10 to Section 9-7-6.5 NMSA 1978;

11 CC. contracts for investment advisory services,
12 investment management services or other investment-related
13 services entered into by the educational retirement board, the
14 state investment officer or the retirement board created
15 pursuant to the Public Employees Retirement Act;

16 DD. the purchase for resale by the state fair
17 commission of feed and other items necessary for the upkeep of
18 livestock; and

19 EE. contracts entered into by the crime victims
20 reparation commission to distribute federal grants to assist
21 victims of crime, including grants from the federal Victims of
22 Crime Act and the federal Violence Against Women Act."

23 SECTION 3. Section 13-1-98.2 NMSA 1978 (being Laws 2003,
24 Chapter 187, Section 1, as amended) is amended to read:

25 "13-1-98.2. ADDITIONAL EXEMPTIONS FROM THE PROCUREMENT

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1 CODE.--Except as provided by Section 1 of this 2011 act, the
2 provisions of the Procurement Code do not apply to contracts
3 entered into by a local public body with a person, firm,
4 organization, corporation, association or state educational
5 institution named in Article 12, Section 11 of the constitution
6 of New Mexico for:

7 A. the operation and maintenance of a hospital
8 pursuant to Chapter 3, Article 44 NMSA 1978;

9 B. the lease or operation of a county hospital
10 pursuant to the Hospital Funding Act;

11 C. the operation and maintenance of a hospital
12 pursuant to the Special Hospital District Act; or

13 D. the use of county buildings pursuant to Section
14 4-38-13.1 NMSA 1978."