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HOUSE BILL 196

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Larry A. Larrañaga

AN ACT

RELATING TO PROCUREMENT; EXEMPTING PURCHASES OF CERTAIN  
ELECTRONIC ONLINE SERVICES FROM THE PROCUREMENT CODE;  
INCREASING THE AMOUNT OF CERTAIN PREPAID PURCHASES THAT ARE  
EXEMPT FROM THE PROCUREMENT CODE; ELIMINATING THE MONETARY  
THRESHOLD CRITERIA WHEN AUTHORIZING CERTAIN DESIGN AND BUILD  
PROJECT DELIVERY SYSTEMS; EXPANDING FUNDING SOURCES FOR  
DEPARTMENT OF TRANSPORTATION DESIGN AND BUILD PROJECT DELIVERY  
SYSTEMS; INCREASING THE DOLLAR LIMIT FOR PROCUREMENT OF SMALL  
PURCHASES; INCREASING THE DOLLAR LIMIT OF MULTIPLE SOURCE  
CONTRACTS FOR PROCUREMENT OF ARCHITECTURAL OR ENGINEERING  
DESIGN SERVICES.

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

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

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

3 A. procurement of items of tangible personal  
4 property or services by a state agency or a local public body  
5 from a state agency, a local public body or external  
6 procurement unit except as otherwise provided in Sections  
7 13-1-135 through 13-1-137 NMSA 1978;

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

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

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

17 E. purchases of books [~~and~~], periodicals, online  
18 electronic references or training materials and online  
19 electronic legal support services, including legal and  
20 investigative research services and reference tools with system  
21 functionality, from the publishers or copyright holders  
22 thereof;

23 F. travel or shipping by common carrier or by  
24 private conveyance or to meals and lodging;

25 G. purchase of livestock at auction rings or to the

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1 procurement of animals to be used for research and  
2 experimentation or exhibit;

3 H. contracts with businesses for public school  
4 transportation services;

5 I. procurement of tangible personal property or  
6 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,  
7 by the corrections industries division of the corrections  
8 department pursuant to rules adopted by the corrections  
9 industries commission, which shall be reviewed by the  
10 purchasing division of the general services department prior to  
11 adoption;

12 J. [~~minor~~] purchases not exceeding [~~five thousand~~  
13 ~~dollars (\$5,000)~~] ten thousand dollars (\$10,000) consisting of  
14 magazine subscriptions, conference registration fees and other  
15 similar purchases where prepayments are required;

16 K. municipalities having adopted home rule charters  
17 and having enacted their own purchasing ordinances;

18 L. the issuance, sale and delivery of public  
19 securities pursuant to the applicable authorizing statute, with  
20 the exception of bond attorneys and general financial  
21 consultants;

22 M. contracts entered into by a local public body  
23 with a private independent contractor for the operation, or  
24 provision and operation, of a jail pursuant to Sections  
25 33-3-26 and 33-3-27 NMSA 1978;

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1 N. contracts for maintenance of grounds and  
2 facilities at highway rest stops and other employment  
3 opportunities, excluding those intended for the direct care and  
4 support of persons with handicaps, entered into by state  
5 agencies with private, nonprofit, independent contractors who  
6 provide services to persons with handicaps;

7 O. contracts and expenditures for services or items  
8 of tangible personal property to be paid or compensated by  
9 money or other property transferred to New Mexico law  
10 enforcement agencies by the United States department of justice  
11 drug enforcement administration;

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

14 Q. contracts with professional entertainers;

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

20 S. contracts for service relating to the design,  
21 engineering, financing, construction and acquisition of public  
22 improvements undertaken in improvement districts pursuant to  
23 Subsection L of Section 3-33-14.1 NMSA 1978 and in county  
24 improvement districts pursuant to Subsection L of Section  
25 4-55A-12.1 NMSA 1978;

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1 T. works of art for museums or for display in  
2 public buildings or places;

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

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

13 W. purchases of promotional goods intended for  
14 resale by the tourism department;

15 X. procurement of printing services for materials  
16 produced and intended for resale by the cultural affairs  
17 department;

18 Y. procurement by or through the public education  
19 department from the federal department of education relating to  
20 parent training and information centers designed to increase  
21 parent participation, projects and initiatives designed to  
22 improve outcomes for students with disabilities and other  
23 projects and initiatives relating to the administration of  
24 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. procurement of services from community  
4 rehabilitation programs or qualified individuals pursuant to  
5 the State Use Act;

6 AA. purchases of products or services for eligible  
7 persons with disabilities pursuant to the federal  
8 Rehabilitation Act of 1973;

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

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

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

21 EE. contracts entered into by the crime victims  
22 reparation commission to distribute federal grants to assist  
23 victims of crime, including grants from the federal Victims of  
24 Crime Act of 1984 and the federal Violence Against Women Act."

25 SECTION 2. Section 13-1-119.1 NMSA 1978 (being Laws 1997,

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1 Chapter 171, Section 5, as amended) is amended to read:

2 "13-1-119.1. PUBLIC WORKS PROJECT DELIVERY SYSTEM--DESIGN  
3 AND BUILD PROJECTS AUTHORIZED.--

4 A. Except for road and highway construction or  
5 reconstruction projects, a design and build project delivery  
6 system may be authorized when the state purchasing agent or a  
7 central purchasing office makes a determination in writing that  
8 it is appropriate and in the best interest of the state or  
9 local public body to use the system on a specific project [~~with~~  
10 ~~a maximum allowable construction cost of more than ten million~~  
11 ~~dollars (\$10,000,000)~~]. The determination shall be issued only  
12 after the state purchasing agent or a central purchasing office  
13 has taken into consideration the following criteria, which  
14 shall be used as the minimum basis in determining when to use  
15 the design and build process:

- 16 (1) the extent to which the project
- 17 requirements have been or can be adequately defined;
- 18 (2) time constraints for delivery of the
- 19 project;
- 20 (3) the capability and experience of potential
- 21 teams with the design and build process;
- 22 (4) the suitability of the project for use of
- 23 the design and build process as concerns time, schedule, costs
- 24 and quality; and
- 25 (5) the capability of the using agency to

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1 manage the project, including experienced personnel or outside  
2 consultants, and to oversee the project with persons who are  
3 familiar with the design and build process.

4 B. When a determination has been made by the state  
5 purchasing agent or a central purchasing office that it is  
6 appropriate to use a design and build project delivery system,  
7 the design and build team shall include, as needed, a New  
8 Mexico registered engineer or architect and a contractor  
9 properly licensed in New Mexico for the type of work required.

10 C. Except as provided in Subsections F and G of  
11 this section, for each proposed state or local public works  
12 design and build project, a two-phase procedure for awarding  
13 design and build contracts shall be adopted and shall include  
14 at a minimum the following:

15 (1) during phase one, and prior to  
16 solicitation, documents shall be prepared for a request for  
17 qualifications by a registered engineer or architect, either  
18 in-house or selected in accordance with Sections 13-1-120  
19 through 13-1-124 NMSA 1978, and shall include minimum  
20 qualifications, a scope of work statement and schedule,  
21 documents defining the project requirements, the composition of  
22 the selection committee and a description of the phase-two  
23 requirements and subsequent management needed to bring the  
24 project to completion. Design and build qualifications of  
25 responding firms shall be evaluated and a maximum of five firms

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1 shall be short-listed in accordance with technical and  
2 qualifications-based criteria; and

3 (2) during phase two, the short-listed firms  
4 shall be invited to submit detailed specific technical concepts  
5 or solutions, costs and scheduling. Unsuccessful firms may be  
6 paid a stipend to cover proposal expenses. After evaluation of  
7 these submissions, selection shall be made and the contract  
8 awarded to the highest-ranked firm.

9 D. Except as provided in Subsections F and G of  
10 this section, to ensure fair, uniform, clear and effective  
11 procedures that will strive for the delivery of a quality  
12 project on time and within budget, the secretary, in  
13 conjunction with the appropriate and affected professional  
14 associations and contractors, shall promulgate rules applicable  
15 to all using agencies, which shall be followed by all using  
16 agencies when procuring a design and build project delivery  
17 system.

18 E. A state agency shall make the decision on a  
19 design and build project delivery system for a state public  
20 works project, and a local public body shall make that decision  
21 for a local public works project. A state agency shall not  
22 make the decision on a design and build project delivery system  
23 for a local public works project.

24 F. The requirements of Subsections C and D of this  
25 section and the minimum construction cost requirement of

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1 Subsection A of this section do not apply to a design and build  
2 project delivery system and the services procured for the  
3 project if:

4 (1) the maximum allowable construction cost of  
5 the project is four hundred thousand dollars (\$400,000) or  
6 less; and

7 (2) the only requirement for architects,  
8 engineers, landscape architects or surveyors is limited to  
9 either site improvements or adaption for a pre-engineered  
10 building or system.

11 G. The procurement of a design and build project  
12 delivery system qualifying for exemptions pursuant to  
13 Subsection F of this section, including the services of any  
14 architect, engineer, landscape architect, construction manager  
15 or surveyor needed for the project, shall be accomplished by  
16 competitive sealed bids pursuant to Sections 13-1-102 through  
17 13-1-110 NMSA 1978."

18 **SECTION 3.** Section 13-1-119.2 NMSA 1978 (being Laws 2009,  
19 Chapter 207, Section 1) is amended to read:

20 "13-1-119.2. DESIGN AND BUILD PROCUREMENT FOR CERTAIN  
21 TRANSPORTATION PROJECTS.--Notwithstanding any prohibition on  
22 road and highway construction or reconstruction projects in  
23 Section 13-1-119.1 NMSA 1978, the department of transportation  
24 may use a design and build project delivery system pursuant to  
25 Section 13-1-119.1 NMSA 1978 for projects with a [maximum

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1 ~~allowable~~] construction cost of more than fifty million dollars  
2 (\$50,000,000) [~~funded in whole or in part by the grants~~  
3 ~~programs of the federal American Recovery and Reinvestment Act~~  
4 ~~of 2009~~]."

5 SECTION 4. Section 13-1-125 NMSA 1978 (being Laws 1984,  
6 Chapter 65, Section 98, as amended) is amended to read:

7 "13-1-125. SMALL PURCHASES.--

8 A. A central purchasing office shall procure  
9 services, construction or items of tangible personal property  
10 having a value not exceeding [~~twenty thousand dollars~~  
11 ~~(\$20,000)~~] sixty thousand dollars (\$60,000) in accordance with  
12 the applicable small purchase regulations adopted by the  
13 secretary, a local public body or a central purchasing office  
14 that has the authority to issue regulations.

15 B. Notwithstanding the requirements of Subsection A  
16 of this section, a central purchasing office may procure  
17 professional services having a value not exceeding [~~fifty~~  
18 ~~thousand dollars (\$50,000)~~] sixty thousand dollars (\$60,000),  
19 excluding applicable state and local gross receipts taxes,  
20 except for the services of landscape architects or surveyors  
21 for state public works projects or local public works projects,  
22 in accordance with professional services procurement  
23 regulations promulgated by the department of finance and  
24 administration, the general services department or a central  
25 purchasing office with the authority to issue regulations.

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1           C. Notwithstanding the requirements of Subsection A  
2 of this section, a state agency or a local public body may  
3 procure services, construction or items of tangible personal  
4 property having a value not exceeding [~~ten thousand dollars~~  
5 ~~(\$10,000)~~] twenty thousand dollars (\$20,000) by issuing a  
6 direct purchase order to a contractor based upon the best  
7 obtainable price.

8           D. Procurement requirements shall not be  
9 artificially divided so as to constitute a small purchase under  
10 this section."

11           SECTION 5. Section 13-1-154.1 NMSA 1978 (being Laws 2007,  
12 Chapter 312, Section 1) is amended to read:

13           "13-1-154.1. MULTIPLE SOURCE CONTRACTS--ARCHITECTURAL AND  
14 DESIGN SERVICE CONTRACTS--INDEFINITE QUANTITY CONSTRUCTION  
15 CONTRACTS.--

16           A. A state agency may procure multiple  
17 architectural or engineering design service contracts for  
18 multiple projects under a single qualifications-based request  
19 for proposals, provided the total amount of a contract and all  
20 renewals does not exceed [~~two hundred thousand dollars~~  
21 ~~(\$200,000)~~] five hundred thousand dollars (\$500,000) over four  
22 years.

23           B. A state agency may procure multiple indefinite  
24 quantity construction contracts pursuant to a price agreement  
25 for multiple projects under a single request for proposals,

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1 provided the total amount of a contract and all renewals does  
2 not exceed two million dollars (\$2,000,000) over four years and  
3 the contract provides that any one purchase order under the  
4 contract may not exceed five hundred thousand dollars  
5 (\$500,000).

6 C. A state agency may make procurements in  
7 accordance with the provision of Subsection A or B of this  
8 section if:

9 (1) the advertisement and request for  
10 proposals states that multiple contracts may or will be  
11 awarded, states the number of contracts that may or will be  
12 awarded and describes the services or construction to be  
13 performed under each contract;

14 (2) there is a single selection process for  
15 all of the multiple contracts, except that for each contract  
16 there may be a separate final list and a separate negotiation  
17 of contract terms;

18 (3) each of the multiple contracts for  
19 professional design services or construction shall have a term  
20 not exceeding four years, including all extensions and  
21 renewals;

22 (4) a contract shall not be awarded pursuant  
23 to this section to a firm that is currently performing under a  
24 contract issued pursuant to this section if the total amount of  
25 all contracts issued pursuant to this section to that firm

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would exceed

~~[(a) two hundred thousand dollars  
(\$200,000) in any four-year period, for architectural or  
engineering design services; or~~

(b)] two million dollars (\$2,000,000) in  
any four-year period, for architectural, engineering design or  
construction services; and

(5) the procurement is subject to the  
limitations of Sections 13-1-150 through 13-1-154 NMSA 1978."

**SECTION 6. EFFECTIVE DATE.**--The effective date of the  
provisions of this act is July 1, 2012.