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SENATE BILL 45

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Bill Tallman

AN ACT

RELATING TO PUBLIC PURCHASES; TRANSFERRING PROCUREMENT-RELATED
FUNCTIONS FROM THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO
THE GENERAL SERVICES DEPARTMENT; REQUIRING NOTICE FOR SOLE
SOURCE CONTRACTS AND EMERGENCY PROCUREMENT; REQUIRING THE
COLLECTION OF INFORMATION ABOUT IN-STATE AND OUT-OF-STATE
CONTRACTS; NARROWING AND CLARIFYING PROVISIONS CONCERNING
EMERGENCY PROCUREMENT; REPEALING AND ENACTING SECTION 13-1-127
NMSA 1978 (BEING LAWS 1984, CHAPTER 65, SECTION 100, AS
AMENDED).

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

SECTION 1. Section 6-5-2.1 NMSA 1978 (being Laws 2003,
Chapter 273, Section 9) is amended to read:

"6-5-2.1. DIVISION--ADDITIONAL DUTIES.--The division
shall:

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1 A. coordinate all procedures for financial
2 administration and financial control and integrate them into an
3 adequate and unified system, including the devising,
4 prescribing and installing of processing documents, records and
5 procedures for state agencies;

6 B. collect and maintain the necessary information
7 to produce ledgers, journals, registers and other supporting
8 records and analyses;

9 C. maintain information that adequately supports
10 all entries in the state general ledger;

11 D. verify and control state agency compliance with
12 allotments;

13 E. conduct all central accounting and fiscal
14 reporting for the state as a whole and produce interim
15 statewide financial reports and the state's comprehensive
16 annual financial statements;

17 F. prescribe, develop, operate and maintain a
18 uniform statewide accounting system network;

19 G. prescribe and approve the installation of any
20 changes in the statewide accounting system network as necessary
21 to secure and maintain internal control and facilitate the
22 recording of accounting data in order to prepare reliable and
23 meaningful statements and reports;

24 H. prescribe the uniform classification of accounts
25 to be used by state agencies;

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- 1 I. operate a central payroll system;
- 2 J. perform monthly reconciliations with the
- 3 balances and accounts kept by the state treasurer and adopt and
- 4 promulgate rules regarding reconciliation for state agencies;
- 5 K. prescribe and revise procedures, techniques and
- 6 formats for electronic data transmission to improve the flow of
- 7 data among state agencies;
- 8 L. monitor reversion of unexpended general fund
- 9 balances by September 30 of each year;
- 10 M. promulgate rules relating to the acceptance of
- 11 credit, charge and debit cards for the payment of fees, taxes
- 12 and other charges assessed by state agencies;
- 13 N. store and maintain records electronically;
- 14 O. establish, with the attorney general's approval,
- 15 a procedure for electronic signatures;
- 16 P. maintain accounts and information as necessary
- 17 to show the sources of state revenues and the purposes for
- 18 which expenditures are made and provide proper accounting
- 19 controls to protect state finances;
- 20 Q. make improvements in the state's model
- 21 accounting practices, systems and procedures;
- 22 R. assist state agencies in resolving financial
- 23 questions or problems;
- 24 S. have access to and authority to examine books,
- 25 accounts, reports, vouchers, correspondence files and other

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1 records, bank accounts, money and other property of a state
2 agency; ~~and~~

3 T. consult with the state auditor to promote better
4 financial statement reporting; and

5 U. collect and maintain information on the amount
6 of state agency contracts awarded to in-state contractors and
7 the amount awarded to out-of-state contractors."

8 SECTION 2. Section 13-1-118 NMSA 1978 (being Laws 1984,
9 Chapter 65, Section 91) is amended to read:

10 "13-1-118. COMPETITIVE SEALED PROPOSALS--PROFESSIONAL
11 SERVICES CONTRACTS--CONTRACT REVIEW.--All contracts for
12 professional services with state agencies shall be reviewed as
13 to form, legal sufficiency and budget requirements by the
14 general services department ~~[or the department of finance and~~
15 ~~administration]~~ if required by the regulations of ~~[either or~~
16 ~~both of the departments]~~ the department. This section ~~[shall]~~
17 does not apply to contracts entered into by the legislative
18 branch of state government, the judicial branch of state
19 government or the boards of regents of state educational
20 institutions named in Article 12, Section 11 of the
21 constitution of New Mexico."

22 SECTION 3. Section 13-1-125 NMSA 1978 (being Laws 1984,
23 Chapter 65, Section 98, as amended) is amended to read:

24 "13-1-125. SMALL PURCHASES.--

25 A. A central purchasing office shall procure

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1 services, construction or items of tangible personal property
2 having a value not exceeding sixty thousand dollars (\$60,000),
3 excluding applicable state and local gross receipts taxes, in
4 accordance with the applicable small purchase rules adopted by
5 the secretary, a local public body or a central purchasing
6 office that has the authority to issue rules.

7 B. Notwithstanding the requirements of Subsection A
8 of this section, a central purchasing office may procure
9 professional services having a value not exceeding sixty
10 thousand dollars (\$60,000), excluding applicable state and
11 local gross receipts taxes, except for the services of
12 landscape architects or surveyors for state public works
13 projects or local public works projects, in accordance with
14 professional services procurement rules promulgated by ~~the~~
15 ~~department of finance and administration~~ the general services
16 department or a central purchasing office with the authority to
17 issue rules.

18 C. Notwithstanding the requirements of Subsection A
19 of this section, a state agency or a local public body may
20 procure services, construction or items of tangible personal
21 property having a value not exceeding twenty thousand dollars
22 (\$20,000), excluding applicable state and local gross receipts
23 taxes, by issuing a direct purchase order to a contractor based
24 upon the best obtainable price.

25 D. Procurement requirements shall not be

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1 artificially divided so as to constitute a small purchase under
2 this section."

3 SECTION 4. Section 13-1-126.1 NMSA 1978 (being Laws 2013,
4 Chapter 40, Section 6) is amended to read:

5 "13-1-126.1. SOLE SOURCE CONTRACTS--NOTICE--PROTEST.--

6 A. At least thirty days before it awards a sole
7 source contract, [~~is awarded~~] the state purchasing agent [~~a~~
8 ~~central purchasing office or a designee of either~~] shall post
9 notice of [~~the~~] its intent to award [~~a sole source~~] the
10 contract on its [~~web site. If a central purchasing office does~~
11 ~~not maintain a web site, it shall post the notice~~] website. At
12 least thirty days before it awards a sole source contract, a
13 central purchasing office shall post notice of its intent to
14 award the contract on its website, if it maintains one, and
15 shall transmit the notice to the state purchasing agent for
16 posting on the state purchasing agent's [~~web site~~] website. In
17 each case, the notice shall identify, at a minimum:

- 18 (1) the parties to the proposed contract;
- 19 (2) the nature and quantity of the service,
20 construction or item of tangible personal property being
21 contracted for; and
- 22 (3) the contract amount.

23 B. Any qualified potential contractor [~~who~~] that
24 was not [~~awarded~~] selected for a proposed sole source contract
25 may protest [~~to the state purchasing agent or a central~~

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1 ~~purchasing office. The protest shall be submitted~~ the
2 selection in writing, within fifteen calendar days ~~[of]~~ after
3 the notice of intent to award ~~[a]~~ the contract ~~[being]~~ was
4 posted by the state purchasing agent or ~~[a]~~ central purchasing
5 office, by submitting the protest to the state purchasing agent
6 or central purchasing office, as appropriate. The state
7 purchasing agent or central purchasing office shall then
8 reconsider its selection."

9 SECTION 5. Section 13-1-127 NMSA 1978 (being Laws 1984,
10 Chapter 65, Section 100, as amended) is repealed and a new
11 Section 13-1-127 NMSA 1978 is enacted to read:

12 "13-1-127. [NEW MATERIAL] EMERGENCY PROCUREMENT--REQUIRED
13 CONDITIONS--LIMITATIONS--NOTICE.--

14 A. The state purchasing agent or a central
15 purchasing office may only make an emergency procurement when
16 the service, construction or item of tangible personal property
17 procured:

18 (1) is needed immediately to:

19 (a) control a serious threat to public
20 health, welfare, safety or property caused by a flood, fire,
21 epidemic, riot, act of terrorism, equipment failure or similar
22 event; or

23 (b) plan or prepare for the response to
24 a serious threat to public health, welfare, safety or property
25 caused by a flood, fire, epidemic, riot, act of terrorism,

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1 equipment failure or similar event; and

2 (2) cannot be acquired through normal
3 procurement methods.

4 B. The state purchasing agent or a central
5 purchasing office:

6 (1) in making an emergency procurement, shall:

7 (a) employ a competitive process to the
8 extent practicable under the circumstances; and

9 (b) use due diligence in determining the
10 basis for the procurement and in selecting a contractor; and

11 (2) shall not make an emergency procurement
12 for the purchase or lease of heavy road equipment.

13 C. The state purchasing agent or a central
14 purchasing office that makes an emergency procurement shall
15 outline its determination of the basis for the procurement and
16 its selection of the contractor in writing and include the
17 writing in the procurement file. Promptly thereafter:

18 (1) the state purchasing agent shall post
19 notice of the procurement on its website; or

20 (2) the central purchasing office shall post
21 notice of the procurement on its website, if it maintains one,
22 and shall transmit the notice to the state purchasing agent for
23 posting on the state purchasing agent's website.

24 D. The state purchasing agent or a central
25 purchasing office that makes an emergency procurement to plan

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1 or prepare for the response to a serious threat to public
2 health, welfare, safety or property caused by a flood, fire,
3 epidemic, riot, act of terrorism, equipment failure or similar
4 event shall account for the money spent in making the
5 procurement and report on that accounting to the legislative
6 finance committee and the department of finance and
7 administration within sixty days after the end of the fiscal
8 year in which the procurement was made."

9 SECTION 6. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
10 FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL
11 OBLIGATIONS, STATUTORY REFERENCES AND RULES.--

12 A. On the effective date of this act, all
13 personnel, functions, appropriations, money, records,
14 furniture, equipment and other property of, or attributable to,
15 the contracts review bureau of the administrative services
16 division of the department of finance and administration are
17 transferred to the purchasing division of the general services
18 department.

19 B. On the effective date of this act, all
20 contractual obligations of the contracts review bureau of the
21 administrative services division of the department of finance
22 and administration become binding on the purchasing division of
23 the general services department.

24 C. On and after the effective date of this act,
25 rules of the department of finance and administration

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1 pertaining to the approval of professional services contracts
2 shall be deemed to be the rules of the general services
3 department until amended or repealed by the general services
4 department, and all references in those rules to the department
5 of finance and administration shall be deemed to be references
6 to the general services department.

7 **SECTION 7. EFFECTIVE DATE.**--The effective date of the
8 provisions of this act is July 1, 2018.

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