

SENATE BILL 88

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Bill Tallman

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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 HJC→~~THE COLLECTION OF~~←HJC HJC→**STATE AGENCIES TO REPORT**←HJC 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).

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

HJC→~~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:~~

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

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

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

~~D. verify and control state agency compliance with allotments;~~

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

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

~~G. prescribe and approve the installation of any changes in the statewide accounting system network as necessary~~

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~~to secure and maintain internal control and facilitate the recording of accounting data in order to prepare reliable and meaningful statements and reports;~~

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

~~I. operate a central payroll system;~~

~~J. perform monthly reconciliations with the balances and accounts kept by the state treasurer and adopt and promulgate rules regarding reconciliation for state agencies;~~

~~K. prescribe and revise procedures, techniques and formats for electronic data transmission to improve the flow of data among state agencies;~~

~~L. monitor reversion of unexpended general fund balances by September 30 of each year;~~

~~M. promulgate rules relating to the acceptance of credit, charge and debit cards for the payment of fees, taxes and other charges assessed by state agencies;~~

~~N. store and maintain records electronically;~~

~~O. establish, with the attorney general's approval, a procedure for electronic signatures;~~

~~P. maintain accounts and information as necessary to show the sources of state revenues and the purposes for which expenditures are made and provide proper accounting controls to protect state finances;~~

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~~Q. make improvements in the state's model  
accounting practices, systems and procedures;~~

~~R. assist state agencies in resolving financial  
questions or problems;~~

~~S. have access to and authority to examine books,  
accounts, reports, vouchers, correspondence files and other  
records, bank accounts, money and other property of a state  
agency; [and]~~

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

~~U. collect and maintain information on the amount  
of state agency contracts awarded to in-state contractors and  
the amount awarded to out-of-state contractors."←HJC~~

HJC→SECTION 1. A new section of the Procurement Code is  
enacted to read:

"[NEW MATERIAL] STATE AGENCY--REPORTING REQUIRED--IN-STATE  
AND OUT-OF-STATE CONTRACTS.--All state agencies shall report  
annually to the purchasing division of the general services  
department information on the amount of state agency contracts  
awarded to in-state contractors and the amount awarded to out-  
of-state contractors."←HJC

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

"13-1-118. COMPETITIVE SEALED PROPOSALS--PROFESSIONAL

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

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

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

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

B. Notwithstanding the requirements of Subsection A of this section, a central purchasing office may procure professional services having a value not exceeding sixty thousand dollars (\$60,000), excluding applicable state and

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local gross receipts taxes, except for the services of landscape architects or surveyors for state public works projects or local public works projects, in accordance with professional services procurement rules promulgated by ~~the department of finance and administration~~ the general services department or a central purchasing office with the authority to issue rules.

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

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

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

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

A. At least thirty days before it awards a sole source contract, ~~[is awarded]~~ the state purchasing agent ~~[a central purchasing office or a designee of either]~~ shall post notice of ~~[the]~~ its intent to award ~~[a sole source]~~ the contract on its ~~[web site. If a central purchasing office does~~

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~~not maintain a web site, it shall post the notice]~~ website. At least thirty days before it awards a sole source contract, a central purchasing office shall post notice of its intent to award the contract on its website, if it maintains one, and shall transmit the notice to the state purchasing agent for posting on the state purchasing agent's [web site] website. In each case, the notice shall identify, at a minimum:

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

B. Any qualified potential contractor ~~[who]~~ that was not [awarded] selected for a proposed sole source contract may protest [to the state purchasing agent or a central purchasing office. The protest shall be submitted] the selection in writing, within fifteen calendar days ~~[of]~~ after the notice of intent to award ~~[a]~~ the contract ~~[being]~~ was posted by the state purchasing agent or ~~[a]~~ central purchasing office, by submitting the protest to the state purchasing agent or central purchasing office, as appropriate. The state purchasing agent or central purchasing office shall then reconsider its selection."

SECTION 5. Section 13-1-127 NMSA 1978 (being Laws 1984, Chapter 65, Section 100, as amended) is repealed and a new

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Section 13-1-127 NMSA 1978 is enacted to read:

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

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

(1) is needed immediately to:

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

(b) plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event; and

(2) cannot be acquired through normal procurement methods.

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

(1) in making an emergency procurement, shall:

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

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

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

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

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

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

D. The state purchasing agent or a central purchasing office that makes an emergency procurement to plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event shall account for the money spent in making the procurement and report on that accounting to the legislative finance committee and the department of finance and administration within sixty days after the end of the fiscal year in which the procurement was made."

**SECTION 6. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL**

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OBLIGATIONS, STATUTORY REFERENCES AND RULES.--

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

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

C. On and after the effective date of this act, rules of the department of finance and administration pertaining to the approval of professional services contracts shall be deemed to be the rules of the general services department until amended or repealed by the general services department, and all references in those rules to the department of finance and administration shall be deemed to be references to the general services department.

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.