

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 230

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

TED HOBBS

AN ACT

RELATING TO PUBLIC PURCHASING; AMENDING SECTIONS OF THE  
PROCUREMENT CODE.

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

Section 1. Section 13-1-67 NMSA 1978 (being Laws 1984,  
Chapter 65, Section 40) is amended to read:

"13-1-67. DEFINITION--LOCAL PUBLIC BODY.-- "Local public  
body" means every political subdivision of the state; [ and]  
the agencies, instrumentalities and institutions thereof; and  
two-year post-secondary educational institutions. "

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

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

A. procurement of items of tangible personal

Underscored material = new  
[bracketed material] = delete

Underscored material = new  
[bracketed material] = delete

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

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

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

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

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

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

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

23 I. procurement of tangible personal property or  
24 services, as defined by Sections 13-1-87 and 13-1-93 NMSA  
25 1978, by the corrections industries division of the

. 120669. 1GJ

Underscored material = new  
[bracketed material] = delete

1 corrections department pursuant to regulations adopted by the  
2 corrections [~~industries~~] commission, which shall be reviewed  
3 by the purchasing division of the general services department  
4 prior to adoption;

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

9 K. municipalities having adopted home rule  
10 charters and having enacted their own purchasing ordinances;

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

15 M contracts entered into by a local public body  
16 with a private independent contractor for the operation, or  
17 provision and operation, of a jail pursuant to Sections  
18 33-3-26 and 33-3-27 NMSA 1978;

19 N. contracts for maintenance of grounds and  
20 facilities at highway rest stops and other employment  
21 opportunities, excluding those intended for the direct care  
22 and support of persons with handicaps, entered into by state  
23 agencies with private, nonprofit, independent contractors who  
24 provide services to persons with handicaps;

25 O. contracts and expenditures for services to be

Underscored material = new  
[bracketed material] = delete

1 paid or compensated by money or other property transferred to  
2 New Mexico law enforcement agencies by the United States  
3 department of justice drug enforcement administration;

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

6 [~~and~~]

7 Q. contracts with professional entertainers; and

8 R. contracts and expenditures for expert witness  
9 or court reporter services in connection with anticipated  
10 proceedings before state or federal courts. "

11 Section 3. Section 13-1-99 NMSA 1978 (being Laws 1984,  
12 Chapter 65, Section 72, as amended) is amended to read:

13 "13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE  
14 STATE PURCHASING AGENT. -- Excluded from the requirement of  
15 procurement through the state purchasing agent but not from  
16 the requirements of the Procurement Code are the following:

17 A. procurement of professional services, except  
18 for professional services related to information and  
19 communication services, resources and systems;

20 B. small purchases having a value not exceeding  
21 [~~two hundred fifty dollars (\$250)]~~ five hundred dollars  
22 (\$500);

23 C. emergency procurement;

24 D. procurement of highway construction or  
25 reconstruction by the state highway and transportation

. 120669. 1GJ

Underscored material = new  
[bracketed material] = delete

1 department;

2 E. procurement by the judicial branch of state  
3 government;

4 F. procurement by the legislative branch of state  
5 government;

6 G. procurement by the boards of regents of state  
7 educational institutions named in Article 12, Section 11 of  
8 the constitution of New Mexico;

9 [~~H.~~] ~~procurement of information processing~~  
10 ~~resources procured through the commission on information and~~  
11 ~~communication management;~~

12 [~~F.~~] H. procurement by the state fair commission of  
13 tangible personal property, services and construction under  
14 [~~five thousand dollars (\$5,000)~~] ten thousand dollars  
15 (\$10,000);

16 [~~J.~~] I. purchases from the instructional material  
17 fund;

18 [~~K.~~] J. procurement by all local public bodies;

19 [~~L.~~] K. procurement by regional education  
20 cooperatives; and

21 [~~M.~~] L. procurement by each state health care  
22 institution that provides direct patient care and that is, or  
23 a part of which is, medicaid certified and participating in  
24 the New Mexico medicaid program "

25 Section 4. Section 13-1-104 NMSA 1978 (being Laws 1984,  
. 120669. 1GJ

Underscored material = new  
[bracketed material] = delete

1 Chapter 65, Section 77, as amended) is amended to read:

2 "13-1-104. COMPETITIVE SEALED BIDS--PUBLIC NOTICE. --

3 A. ~~[The]~~ An invitation for bids or a notice  
4 thereof shall be published not less than ten calendar days  
5 prior to the date set forth for the opening of bids. In the  
6 case of purchases made by the state purchasing agent, the  
7 invitation or notice shall be published at least once in at  
8 least three newspapers of general circulation in this state.  
9 In the case of purchases made by other central purchasing  
10 offices, the invitation or notice shall be published at least  
11 once in a newspaper of general circulation in the area in  
12 which the central purchasing office is located. These  
13 requirements of publication are in addition to ~~[ any]~~ other  
14 procedures which may be adopted by central purchasing offices  
15 to notify prospective bidders that bids will be received,  
16 including but not limited to publication in a trade journal,  
17 if available. If there is no newspaper of general circulation  
18 in the area in which the central purchasing office is located,  
19 ~~[such]~~ other notice may be given as is commercially  
20 reasonable.

21 B. The state purchasing agent and all central  
22 purchasing offices shall send copies of the notice or  
23 invitation for bids involving the expenditure of more than  
24 ~~[five thousand dollars (\$5,000)]~~ ten thousand dollars  
25 (\$10,000) to those businesses which have signified in writing

. 120669. 1GJ

Underscored material = new  
[bracketed material] = del ete

1 an interest in submitting bids for particular categories of  
2 items of tangible personal property, construction and services  
3 and which have paid any required fees. The state purchasing  
4 agent or a central purchasing office may set different  
5 registration fees for different categories of services,  
6 construction or items of tangible personal property, but such  
7 fees shall be related to the actual, direct cost of furnishing  
8 copies of the notice or invitation for bids to the prospective  
9 bidders. The fees shall be used exclusively for the purpose  
10 of furnishing copies of the notice or invitation for bids of  
11 proposed procurements to prospective bidders.

12 C. As used in this subsection, "prospective  
13 bidders" includes persons considering submission of a bid as a  
14 general contractor for the construction contract and persons  
15 who may submit bids to a general contractor for work to be  
16 subcontracted pursuant to the construction contract. The  
17 state purchasing agent and all central purchasing offices  
18 shall make copies of invitations for bids for construction  
19 contracts available to prospective bidders. The state  
20 purchasing agent or a central purchasing office may require  
21 prospective bidders who have requested documents for bid on a  
22 construction contract to pay a deposit for a copy of the  
23 documents for bid. The deposit shall equal the full cost of  
24 reproduction and delivery of the documents for bid. The  
25 deposit, less delivery charges, shall be refunded if the

. 120669. 1GJ

Underscored material = new  
[bracketed material] = delete

1 documents for bid are returned in usable condition within the  
2 time limits specified in the documents for bid, which time  
3 limits shall be no less than ten calendar days from the date  
4 of the bid opening. All forfeited deposits shall be credited  
5 to the funds of the state purchasing agent or central  
6 purchasing office, whichever is applicable."

7 Section 5. Section 13-1-135 NMSA 1978 (being Laws 1984,  
8 Chapter 65, Section 108) is amended to read:

9 "13-1-135. COOPERATIVE PROCUREMENT AUTHORIZED. --

10 A. Cooperative procurement agreements between  
11 governmental entities with common needs shall be used for a  
12 single solicitation and subsequent contract if, by broadening  
13 and strengthening the bargaining power of the individual  
14 governmental entities, opportunities exist to maximize the  
15 value of public funds and reduce administrative costs.

16 ~~[A.]~~ B. Unless a joint powers agreement is  
17 required pursuant to Subsection C of this section, [any] a  
18 state agency or local public body may either participate in,  
19 sponsor or administer a cooperative procurement agreement for  
20 the procurement of [any] services, construction or items of  
21 tangible personal property with [any other] another state  
22 agency, local public body or external procurement unit in  
23 accordance with an agreement entered into [under the Joint  
24 Powers Agreements Act] and approved by the governing authority  
25 of each of the public agencies involved. A cooperative

. 120669. 1GJ



Underscored material = new  
[bracketed material] = delete

1 procurement shall clearly specify the purpose of the agreement  
2 and the method by which the purpose will be accomplished. Any  
3 power exercised pursuant to the agreement shall be limited to  
4 the central purchasing office of one of the contracting  
5 parties, even though one or more of the parties may be an  
6 external procurement unit. An approved and signed copy of  
7 each cooperative procurement agreement entered into pursuant  
8 to this subsection shall be filed with the state purchasing  
9 agent. A cooperative procurement agreement pursuant to the  
10 authority of this subsection is limited to the procurement of  
11 items of tangible personal property, services or construction.

12 C. A cooperative procurement agreement involving  
13 mutually held funds between the parties, the transfer of funds  
14 from one party to another or the receipt of funds by a state  
15 agency or local public body shall only be entered into  
16 pursuant to the Joint Powers Agreements Act.

17 ~~[B.]~~ D. Central purchasing offices other than the  
18 state purchasing agent may cooperate by agreement with the  
19 state purchasing agent in obtaining contracts or price  
20 agreements, and such ~~[contract]~~ contracts or agreed prices  
21 shall apply to purchase orders subsequently issued ~~[under]~~  
22 pursuant to the agreement. "

23 Section 6. Section 13-1-155 NMSA 1978 (being Laws 1984,  
24 Chapter 65, Section 128, as amended) is amended to read:

25 "13-1-155. PROCUREMENT OF USED ITEMS--APPRAISAL

. 120669. 1GJ

Underscored material = new  
[bracketed material] = delete

1       REQUIRED-- COUNTY ROAD EQUIPMENT EXCEPTION FOR AUCTIONS. --

2               A.   A central purchasing office, when procuring  
3       used items of tangible personal property, [~~the estimated cost~~  
4       ~~of which exceeds five thousand dollars (\$5,000)~~] shall request  
5       bids as though the items were new, adding specifications that  
6       permit used items under conditions to be outlined in the bid  
7       specifications, including, [~~but not limited to requiring a~~  
8       ~~written warranty for at least ninety days after date of~~  
9       ~~delivery~~] if applicable, a requirement that the seller provide  
10      the usual and customary written warranty as is extended to  
11      private sector buyers and an independent "certificate of  
12      working order" by a qualified mechanic, [~~or~~] appraiser or  
13      technician.

14              B.   Notwithstanding the provisions of Subsection A  
15      of this section, the central purchasing office for a county  
16      may purchase, at public or private auctions conducted by  
17      established, recognized commercial auction companies, used  
18      items of heavy equipment [~~having an estimated cost that~~  
19      ~~exceeds five thousand dollars (\$5,000)~~] for use in  
20      construction and maintenance of county streets, roads and  
21      highways, subject to the following provisions:

22                      [~~(1) the commercial auction company shall~~  
23      ~~have been in business for at least three years preceding the~~  
24      ~~date of purchase and shall conduct at least five auctions~~  
25      ~~annually;~~

Underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

~~(2) the value of each piece of equipment shall be appraised]~~

(1) for each item of equipment that the county is interested in purchasing at a public auction, an appraisal shall be performed prior to the auction by a qualified disinterested appraiser retained and paid by the county who shall make a written appraisal report stating the basis for the appraisal, including the age, condition, range of value or target value and comparable sales [~~and stating that~~] of like equipment. The appraisal report shall include a signed statement that the appraiser has exercised his independent judgment without prior understanding or agreement with any person as to a target value or range of value;

~~[(3)]~~ (2) for each item of equipment, an independent "certificate of working condition" shall be obtained prior to the auction from a qualified mechanic, who shall have made a detailed inspection of each major working or major functional part and certified the working condition of each; and

~~[(4) the price paid]~~ (3) for each item of equipment, the maximum price that is bid and paid by the county, including all auction fees and buyer's surcharges, shall not exceed the appraised value. "

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3  
4  
5  
6 February 4, 1998

7  
8 Mr. Speaker:

9  
10 Your JUDICIARY COMMITTEE, to whom has been referred

11  
12 HOUSE BILL 230

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

16  
17 1. On page 4, line 17, after "services" strike the  
18 remainder of the line, strike all of line 18 and strike line  
19 19 up to the semicolon.

20  
21 2. On page 8, line 11, after "for" strike the  
22 remainder of the line, strike line 12 through "contract" and  
23 insert in lieu thereof "solicitations and subsequent  
contracts".

24  
25 3. On page 9, line 4, before the first occurrence of  
"the" insert "the statutory powers of".,

. 120669. 1GJ

Underscored material = new  
[bracketed material] = delete

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

HJC/ HB 230

Page 13

and thence referred to the APPROPRIATIONS AND FINANCE  
COMMI TTEE.

Respectfully submitted,

\_\_\_\_\_  
Thoms P. Foy, Chair man

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chi ef Clerk)

(Chi ef Clerk)

Date \_\_\_\_\_

Underscored material = new  
[bracketed material] = delete

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

HJC/ HB 230

Page 14

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Alwin, Sanchez

Absent: None

122816.1

G:\BILLTEXT\BILLW\_98\H0230

Underscored material = new  
[bracketed material] = delete

. 120669. 1GJ

1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998  
3

4 February 17, 1998  
5

6  
7 Mr. Speaker:  
8

9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to  
10 whom has been referred

11 HOUSE BILL 230, as amended  
12

13 has had it under consideration and reports same with  
14 recommendation that it DO PASS, amended as follows:  
15

16 1. On page 8, line 11, strike "shall" and insert in lieu  
17 thereof "may".  
18

19 Respectfully submitted,  
20

21  
22 \_\_\_\_\_  
23  
24 Max Coll, Chairman  
25

1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 HARC/HB 230, aa

Page 16

4 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

5  
6 (Chief Clerk)

(Chief Clerk)

7  
8 Date \_\_\_\_\_

9  
10 The roll call vote was 14 For 2 Against

11 Yes: 14

12 No: Coll, Varela

13 Excused: Marquardt, Watchman

14 Absent: None

15  
16 123930.1

17 G:\BILLTEXT\BILLW\_98\H0230

18  
19  
20  
21  
22  
23  
24  
25  
Underscored material = new  
[bracketed material] = delete

. 120669. 1GJ