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HOUSE BILL 389

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

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO MUNICIPAL PROCUREMENT; ENACTING A NEW SECTION OF THE MUNICIPAL CODE THAT AUTHORIZES MUNICIPALITIES TO CONTRACT DIRECTLY WITH WATER STORAGE TANK SERVICE PROVIDERS; AMENDING THE PROCUREMENT CODE TO PROVIDE AN EXCEPTION FOR MUNICIPALITIES ENTERING INTO CONTRACTS WITH WATER STORAGE TANK SERVICE PROVIDERS.

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

SECTION 1. A new section of the Municipal Code is enacted to read:

"[NEW MATERIAL] WATER STORAGE TANK SERVICE CONTRACTS.--A municipality may, by direct negotiation or through the solicitation of requests for proposals, enter into a multiyear service contract for the engineering, repair and maintenance of a water storage tank and the appurtenant facilities owned,

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1 controlled or operated by the municipality, provided that the  
2 contract for services includes provisions that:

3 A. provide that the municipality is not required to  
4 make total payments in a single year that exceed the water  
5 utility charges received by the municipality for that year;

6 B. require that the work be performed under the  
7 review of a professional engineer licensed in the state of New  
8 Mexico who certifies that the work will be performed in  
9 compliance with all applicable codes and engineering standards;  
10 and

11 C. provide that if, on the date of commencement of  
12 the contract, the water storage tank or appurtenant facilities  
13 require engineering, repair or service in order to bring the  
14 tank or facilities into compliance with federal, state or local  
15 requirements, the party contracting with the municipality shall  
16 provide the engineering, repair or service and that the cost of  
17 the work necessary to ensure such compliance shall be itemized  
18 separately and charged to the municipality in payments spread  
19 over a period of not less than three years from the date of  
20 commencement of the contract."

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

7 C. printing and duplicating contracts involving  
8 materials that 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 the  
19 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 1978,  
25 by the corrections industries division of the corrections

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1 department pursuant to rules adopted by the corrections  
2 industries commission, which shall be reviewed by the  
3 purchasing division of the general services department prior to  
4 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 charters  
10 and having enacted their own purchasing ordinances;

11 L. the issuance, sale and delivery of public  
12 securities pursuant to the applicable authorizing statute, with  
13 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 and  
22 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 or items

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

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

7 Q. contracts with professional entertainers;

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

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

19 T. works of art for museums or for display in  
20 public buildings or places;

21 U. contracts entered into by a local public body  
22 with a person, firm, organization, corporation or association  
23 or a state educational institution named in Article 12, Section  
24 11 of the constitution of New Mexico for the operation and  
25 maintenance of a hospital pursuant to Chapter 3, Article 44

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1 NMSA 1978, lease or operation of a county hospital pursuant to  
2 the Hospital Funding Act or operation and maintenance of a  
3 hospital pursuant to the Special Hospital District Act;

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

6 W. purchases of promotional goods intended for  
7 resale by the tourism department;

8 X. procurement of printing services for materials  
9 produced and intended for resale by the cultural affairs  
10 department;

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

21 Z. procurement of services from community  
22 rehabilitation programs or qualified individuals pursuant to  
23 the State Use Act;

24 AA. purchases of products or services for eligible  
25 persons with disabilities pursuant to the federal

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1 Rehabilitation Act of 1973;

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

6 CC. contracts for investment advisory services,  
7 investment management services or other investment-related  
8 services entered into by the educational retirement board, the  
9 state investment officer or the retirement board created  
10 pursuant to the Public Employees Retirement Act;

11 DD. the purchase for resale by the state fair  
12 commission of feed and other items necessary for the upkeep of  
13 livestock; ~~and~~

14 EE. contracts entered into by the crime victims  
15 reparation commission to distribute federal grants to assist  
16 victims of crime, including grants from the federal Victims of  
17 Crime Act of 1984 and the federal Violence Against Women Act;  
18 and

19 FF. contracts entered into by a municipality for  
20 the service of water storage tanks as provided for in the  
21 Municipal Code."

22 SECTION 3. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is July 1, 2011.

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