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HOUSE BILL 781

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

LARRY A. LARRANAGA

AN ACT

RELATING TO PROCUREMENT; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE PROCUREMENT CODE; MAKING AN APPROPRIATION.

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

Section 1. Section 13-1-38 NMSA 1978 (being Laws 1984,
Chapter 65, Section 11) is amended to read:

"13-1-38. DEFINITION-- CHANGE ORDER. -- "Change order" means
a written order signed and issued by a procurement officer after
execution of the contract directing the contractor to make
~~[changes which]~~ a change within the general scope of the
contract, consisting of additions, deletions or other revisions
that the changes clause of the contract authorizes the
procurement officer to order with or without the consent of the
contractor. "

Section 2. Section 13-1-40 NMSA 1978 (being Laws 1984,

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1 Chapter 65, Section 13) is amended to read:

2 "13-1-40. DEFINITION--CONSTRUCTION. --

3 A. "Construction" means building, altering,
4 repairing, installing or demolishing in the ordinary course of
5 business any:

6 (1) road, highway, bridge, parking area or
7 related project;

8 (2) building, stadium, parking or other
9 structure;

10 (3) airport, subway or similar facility;

11 (4) park, trail, athletic field, golf course or
12 similar facility;

13 (5) dam, reservoir, canal, ditch or similar
14 facility;

15 (6) sewage or water treatment facility, power
16 generating plant, pump station, natural gas compressing station
17 or similar facility;

18 (7) sewage, water, gas or other pipeline;

19 (8) transmission line;

20 (9) radio, television or other tower;

21 (10) water, oil or other storage tank;

22 (11) shaft, tunnel or other mining
23 appurtenance;

24 (12) electrical wiring, plumbing or plumbing
25 fixture, gas piping, gas appliances or water conditioners;

. 114249. 1

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1 (13) air conditioning conduit, heating or other
2 similar mechanical work; or

3 (14) similar work, structures or installations.

4 B. "Construction" shall also include:

5 (1) leveling or clearing land;

6 (2) excavating earth;

7 (3) drilling wells of any type, including
8 seismographic shot holes or core drilling; and

9 (4) similar work, structures or installations."

10 Section 3. Section 13-1-41 NMSA 1978 (being Laws 1984,
11 Chapter 65, Section 14) is amended to read:

12 "13-1-41. DEFINITION--CONTRACT.--"Contract" means [any] a
13 written agreement for the procurement of items of tangible
14 personal property, services or construction."

15 Section 4. A new section of the Procurement Code, Section
16 13-1-42.1 NMSA 1978, is enacted to read:

17 "13-1-42.1. [NEW MATERIAL] DEFINITION--CONTRACT ORDER.--
18 "Contract order" means the document issued by a using agency
19 that directs a contractor to deliver items of tangible personal
20 property, services or construction pursuant to an existing price
21 agreement."

22 Section 5. Section 13-1-43 NMSA 1978 (being Laws 1984,
23 Chapter 65, Section 16) is amended to read:

24 "13-1-43. DEFINITION--CONTRACTOR.--"Contractor" means any
25 business having a contract with a state agency or a local public

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1 body. For construction purposes, "contractor" means a person
2 licensed as a contractor by the construction industries division
3 of the regulation and licensing department."

4 Section 6. Section 13-1-55 NMSA 1978 (being Laws 1989,
5 Chapter 69, Section 1) is amended to read:

6 "13-1-55. DEFINITION--ENGINEERING SERVICES. -- "Engineering
7 services" means any service or creative work [~~the adequate~~
8 ~~performance of which~~] that requires engineering education,
9 training and experience in the application of special knowledge
10 of the mathematical, physical and engineering sciences to such
11 services or creative work as consultation, investigation,
12 forensic investigation, evaluation, planning and design of
13 engineering works and systems, expert technical testimony,
14 engineering studies and the review of construction for the
15 purpose of assuring substantial compliance with drawings and
16 specifications; any of which embrace such services or work,
17 either public or private, in connection with any utilities,
18 structures, buildings, machines, equipment, processes, work
19 systems, projects and industrial or consumer products or
20 equipment of a mechanical, electrical, hydraulic, chemical,
21 pneumatic, environmental or thermal nature, insofar as they
22 involve safeguarding life, health or property, and including
23 such other professional services as may be necessary to the
24 planning, progress and completion of any engineering services.
25 Such practice includes the performance of architectural work

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1 incidental to the practice of engineering and the provision of
2 general administration of construction contracts. "Engineering
3 services" does not include responsibility for the
4 superintendence of construction, site conditions, operations,
5 equipment, personnel or the maintenance of safety in the work
6 place. "

7 Section 7. Section 13-1-67 NMSA 1978 (being Laws 1984,
8 Chapter 65, Section 40) is amended to read:

9 "13-1-67. DEFINITION--LOCAL PUBLIC BODY.--"Local public
10 body" means every political subdivision of the state and the
11 agencies, instrumentalities and institutions thereof and two-
12 year post-secondary educational institutions not identified in
13 Article 12, Section 11 of the constitution of New Mexico."

14 Section 8. Section 13-1-71 NMSA 1978 (being Laws 1984,
15 Chapter 65, Section 44) is amended to read:

16 "13-1-71. DEFINITION--PRICE AGREEMENT.--"Price agreement"
17 means a definite quantity contract or indefinite quantity
18 contract [~~which~~] that requires the contractor to furnish items
19 of tangible personal property, services or construction to a
20 state agency or a local public body [~~which~~] that issues a
21 [~~purchase~~] contract order, if the [~~purchase~~] contract order is
22 within the quantity limitations of the contract, if any."

23 Section 9. Section 13-1-76 NMSA 1978 (being Laws 1984,
24 Chapter 65, Section 49, as amended) is amended to read:

25 "13-1-76. DEFINITION--PROFESSIONAL SERVICES.--

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1 "Professional services" means the services of architects,
2 archeologists, engineers, surveyors, landscape architects,
3 medical arts practitioners, scientists, management and systems
4 analysts, certified public accountants, registered public
5 accountants, lawyers, psychologists, planners, researchers and
6 persons or businesses providing similar services that may be
7 identified by a determination issued by the purchasing division
8 or a central purchasing office."

9 Section 10. Section 13-1-77 NMSA 1978 (being Laws 1984,
10 Chapter 65, Section 50) is amended to read:

11 "13-1-77. DEFINITION--PURCHASE ORDER. --"Purchase order"
12 means the document issued by the state purchasing agent or a
13 central purchasing office [~~which directs~~] to formalize a
14 purchase transaction with a contractor to deliver items of
15 tangible personal property, services or construction pursuant to
16 an existing contract. The purchase order shall contain
17 statements as to the quantity, quality, description and price of
18 the goods, services or construction ordered; applicable terms
19 as to payment, discounts, date of performance and
20 transportation; and other factors of suitable references
21 pertinent to the purchase and its execution by the contractor."

22 Section 11. Section 13-1-82 NMSA 1978 (being Laws 1984,
23 Chapter 65, Section 55) is amended to read:

24 "13-1-82. DEFINITION--RESPONSIBLE BIDDER. --"Responsible
25 bidder" means a bidder who submits a responsive bid and who has

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1 furnished, when required, information and data to prove that
2 ~~[his]~~ he has the appropriate license when required and financial
3 resources, production or service facilities, personnel, service
4 reputation and experience ~~[are]~~ adequate to make satisfactory
5 delivery of the services, construction or items of tangible
6 personal property described in the invitation for bids. "

7 Section 12. Section 13-1-83 NMSA 1978 (being Laws 1984,
8 Chapter 65, Section 56) is amended to read:

9 "13-1-83. DEFINITION-- RESPONSIBLE OFFEROR. -- "Responsible
10 offeror" means an offeror who submits a responsive proposal and
11 who has furnished, when required, information and data to prove
12 that his financial resources, production or service facilities,
13 personnel, service reputation and experience are adequate to
14 make satisfactory delivery of the services or items of tangible
15 personal property described in the request for proposal. "

16 Section 13. Section 13-1-87 NMSA 1978 (being Laws 1984,
17 Chapter 65, Section 60) is amended to read:

18 "13-1-87. DEFINITION-- SERVICES. -- "Services" means the
19 furnishing of labor, time or effort by a contractor not
20 involving the delivery of a specific end product other than
21 reports and other materials ~~[which]~~ that are merely incidental
22 to the required performance. "Services" includes ~~[the~~
23 ~~furnishing of insurance]~~ trade or technical services of a
24 janitor, security guard, travel agent, plumber, electrician,
25 food service operator, mechanic or repair person, but does not

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1 include construction as defined in Section 13-1-40 NMSA 1978 or
2 the services of employees of a state agency or a local public
3 body. "

4 Section 14. Section 13-1-91 NMSA 1978 (being Laws 1984,
5 Chapter 65, Section 64, as amended) is amended to read:

6 "13-1-91. DEFINITION--STATE OR LOCAL PUBLIC WORKS
7 PROJECT.--"State public works project" or "local public works
8 project" means a project of a state agency, not including
9 projects of the state educational institutions, the supreme
10 court building commission or the legislature or a local public
11 [~~bodies, which~~] body that uses architectural or engineering
12 services requiring professional design or related services
13 costing twenty-five thousand dollars (\$25,000) or more, [~~or~~]
14 landscape architectural services requiring professional design
15 or related services costing fifteen thousand dollars (\$15,000)
16 or more or surveying services requiring professional services
17 costing five thousand dollars (\$5,000) or more, excluding
18 applicable state and local gross receipts taxes. "

19 Section 15. Section 13-1-95 NMSA 1978 (being Laws 1984,
20 Chapter 65, Section 68) is amended to read:

21 "13-1-95. PURCHASING DIVISION--CREATION--DIRECTOR IS STATE
22 PURCHASING AGENT--APPOINTMENT--DUTIES.--

23 A. The "purchasing division" is created within the
24 general services department.

25 B. Subject to the authority of the secretary, the

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1 state purchasing agent shall be the administrator and chief
2 executive of the purchasing division. The state purchasing
3 agent shall be appointed by the secretary with the approval of
4 the governor.

5 C. The purchasing division and state purchasing
6 agent shall be the executive procurement officers, responsible
7 for the procurement of services, construction and items of
8 tangible personal property for all state agencies except as
9 otherwise provided in the Procurement Code and shall administer
10 the Procurement Code for those state agencies not excluded from
11 the requirement of procurement through the state purchasing
12 agent.

13 D. The state purchasing agent shall have the
14 following additional authority and responsibility to:

15 (1) recommend procurement regulations to the
16 secretary;

17 (2) establish, [~~and~~] maintain and conduct
18 training programs for state agencies and local public bodies for
19 the development and use of procurement specifications, [~~and~~] for
20 the inspection, testing and acceptance of services, construction
21 and items of tangible personal property and for other matters
22 pertaining to public procurement and contracting consistent with
23 the Procurement Code and applicable rules and procedures of the
24 purchasing division;

25 (3) cooperate with the [~~state budget division~~]

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1 ~~of the~~] department of finance and administration in the
2 preparation of statistical data concerning the acquisition and
3 usage of all services, construction and items of tangible
4 personal property by state agencies and other matters as
5 requested;

6 (4) require state agencies to furnish reports
7 concerning usage, needs and stocks on hand of items of tangible
8 personal property and usage and needs for services or
9 construction;

10 (5) prescribe, with consent of the secretary,
11 forms to be used by state agencies to requisition and report the
12 procurement of items of tangible personal property, services and
13 construction;

14 (6) provide information to state agencies and
15 local public bodies concerning the development of
16 specifications, quality control methods and other procurement
17 information; and

18 (7) collect information concerning procurement
19 matters, quality and quality control of commonly used services,
20 construction and items of tangible personal property.

21 E. The state purchasing agent shall, upon the request
22 of the central purchasing office of a local public body, procure
23 a price agreement for the requested services, construction or
24 items of tangible personal property.

25 F. The "procurement review bureau" is created in the

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1 purchasing division. Duties of the bureau as set by the state
2 purchasing agent and approved by the secretary shall include
3 site assessment of agency-level purchasing activity, and other
4 central purchasing offices on request, to determine compliance
5 with state laws and regulations; recommendations on policies and
6 procedures that need to be adjusted or are being misinterpreted;
7 and acting as the state's coordinator in recycled product
8 procurement. The bureau shall perform other duties assigned by
9 the secretary or the state purchasing agent."

10 Section 16. Section 13-1-98 NMSA 1978 (being Laws 1984,
11 Chapter 65, Section 71, as amended) is amended to read:

12 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE. --The
13 provisions of the Procurement Code shall not apply to:

14 A. procurement of items of tangible personal property
15 or services by a state agency or a local public body from a
16 state agency, a local public body or external procurement unit
17 except as otherwise provided in Sections 13-1-135 through
18 13-1-137 NMSA 1978;

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

21 C. printing and duplicating contracts involving
22 materials which are required to be filed in connection with
23 proceedings before administrative agencies or state or federal
24 courts;

25 D. purchases of publicly provided or publicly

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1 regulated gas, electricity, water, sewer and refuse collection
2 and similar services;

3 E. purchases of books, [~~and~~] periodicals, off-the-
4 shelf software and videos from the publishers, [~~or~~] copyright
5 holders or licensed owners thereof when the materials are not
6 available from distributors who will participate in competitive
7 bidding;

8 F. travel or shipping by common carrier or by private
9 conveyance or to meals and lodging;

10 G. purchase of livestock at auction rings or to the
11 procurement of animals to be used for research and
12 experimentation or exhibit;

13 H. contracts with businesses for public school
14 transportation services;

15 I. procurement of tangible personal property or
16 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
17 by the corrections industries division of the corrections
18 department pursuant to regulations adopted by the corrections
19 [~~industries~~] commission, which shall be reviewed by the
20 purchasing division of the general services department prior to
21 adoption;

22 J. minor purchases consisting of magazine
23 subscriptions, conference registration fees, membership dues in
24 professional organizations and other similar purchases where
25 prepayments are required;

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1 K. municipalities having adopted home rule charters
2 and having enacted their own purchasing ordinances;

3 L. the issuance, sale and delivery of public
4 securities pursuant to the applicable authorizing statute, with
5 the exception of bond attorneys and general financial
6 consultants;

7 M. contracts entered into by a local public body with
8 a private independent contractor for the operation, or provision
9 and operation, of a jail pursuant to Sections 33-3-26 and
10 33-3-27 NMSA 1978;

11 N. contracts for maintenance of grounds and facilities
12 at highway rest stops and other contracts for employment
13 opportunities, excluding those intended for the direct care and
14 support of persons with handicaps, entered into by state
15 agencies with private, nonprofit, independent contractors who
16 provide services to persons with handicaps;

17 O. contracts and expenditures for services to be paid
18 or compensated by money or other property transferred to New
19 Mexico law enforcement agencies by the United States department
20 of justice drug enforcement administration;

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

23 Q. contracts with professional entertainers;

24 R. placement costs for media advertisements that
25 promote New Mexico and that are not part of an ongoing

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1 advertising campaign and legal notices or advertisements as
2 required by law or the order of a court of record in this state;

3 S. fees paid for expert witness testimony in
4 connection with proceedings before administrative agencies or
5 state or federal courts; and

6 T. procurement of items of tangible personal property
7 in their final form, whose purpose is strictly for resale
8 through an enterprise agency wherein the activity is in
9 accordance with the organizational unit's stated mission."

10 Section 17. Section 13-1-99 NMSA 1978 (being Laws 1984,
11 Chapter 65, Section 72, as amended) is amended to read:

12 "13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE
13 STATE PURCHASING AGENT. -- Excluded from the requirement of
14 procurement through the state purchasing agent, but not from the
15 requirements of the Procurement Code and regulations promulgated
16 pursuant to Section 13-1-125 NMSA 1978, are the following:

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

20 B. small purchases having a value not exceeding [~~two~~
21 ~~hundred fifty dollars (\$250)] one thousand dollars (\$1,000);~~

22 C. emergency procurement;

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

. 114249. 1

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

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

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

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

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

14 [~~J.~~] I. purchases from the instructional material
15 fund;

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

17 [~~L.~~] K. procurement by regional education
18 cooperatives; and

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

23 Section 18. Section 13-1-104 NMSA 1978 (being Laws 1984,
24 Chapter 65, Section 77, as amended) is amended to read:

25 "13-1-104. COMPETITIVE SEALED BIDS--PUBLIC NOTICE. --

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

18 B. The state purchasing agent and all central
19 purchasing offices shall send copies of the notice or invitation
20 for bids involving the expenditure of more than [~~five thousand~~
21 ~~dollars (\$5,000)~~] ten thousand dollars (\$10,000) to those
22 businesses [~~which~~] that have signified in writing an interest in
23 submitting bids for particular categories of items of tangible
24 personal property, construction and services and which have paid
25 any required fees. The state purchasing agent or a central

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1 purchasing office may set different registration fees for
2 different categories of services, construction or items of
3 tangible personal property, but such fees shall be related to
4 the actual, direct cost of furnishing copies of the notice or
5 invitation for bids to the prospective bidders. The fees shall
6 be used exclusively for the purpose of furnishing copies of the
7 notice or invitation for bids of proposed procurements to
8 prospective bidders.

9 C. As used in this subsection, "prospective bidders"
10 includes ~~[persons]~~ a person considering submission of a bid as a
11 licensed general contractor for the proposed construction
12 contract and persons who may submit bids to a licensed general
13 contractor for work to be subcontracted pursuant to the proposed
14 construction contract. The state purchasing agent and all
15 central purchasing offices shall make copies of invitations for
16 bids for construction contracts available to prospective
17 bidders. The state purchasing agent or a central purchasing
18 office may require prospective bidders who have requested bid
19 documents ~~[for bid]~~ on a proposed construction contract to pay a
20 deposit for a copy of the bid documents ~~[for bid]~~. The deposit
21 shall equal the full cost of reproduction and delivery of the
22 bid documents ~~[for bid]~~. The deposit, less delivery charges,
23 shall be refunded if the bid documents ~~[for bid]~~ are returned in
24 usable condition within the time limits specified in the
25 documents for bid, which time limits shall be no less than ten

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1 calendar days from the date of the bid opening. All forfeited
2 deposits shall be credited to the funds of the state purchasing
3 agent or central purchasing office, whichever is applicable. "

4 Section 19. Section 13-1-105 NMSA 1978 (being Laws 1984,
5 Chapter 65, Section 78, as amended) is amended to read:

6 "13-1-105. COMPETITIVE SEALED BIDS--RECEIPT AND ACCEPTANCE
7 OF BIDS. --Bids shall be unconditionally accepted for

8 consideration for award without alteration or correction, except
9 as authorized in the Procurement Code. Bids shall be evaluated
10 based on the requirements set forth in the invitation for bids,

11 which requirements may include criteria to determine
12 acceptability such as inspection, testing, quality, workmanship,
13 delivery and suitability for a particular purpose. Those

14 criteria such as discounts, transportation costs and total or
15 life-cycle costs that will affect the bid price shall be
16 objectively measurable, which shall be defined by regulation.

17 The invitation for bids shall set forth the evaluation criteria
18 to be used. No criteria may be used in bid evaluation that are
19 not set forth in the invitation for bids. [~~If the lowest~~

20 ~~responsible bid has otherwise qualified and if there is no~~
21 ~~change in the original terms and conditions, the lowest bidder~~
22 ~~may negotiate with the purchaser for a lower total bid in order~~

23 ~~to avoid rejection of all bids for the reason that the lowest~~
24 ~~bid was up to ten percent higher than budgeted project funds.~~

25 ~~Such negotiation shall not be allowed if the lowest bid was more~~

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1 ~~than ten percent over budgeted project funds.]~~ In the event all
2 bids for a construction project exceed available funds as
3 certified by the appropriate fiscal officer, and the lowest
4 responsive bid, determined by a combination of base bid plus or
5 minus any alternates, does not exceed the funds by more than ten
6 percent, the state purchasing agent or a central purchasing
7 officer may, in situations where time or economic considerations
8 preclude resolicitation of work of a reduced scope, negotiate an
9 adjustment of the bid price, including changes in the scope,
10 plans and technical specifications, with the lowest responsible
11 bidder in order to bring the bid within the amount of available
12 funds. The state purchasing agent or central purchasing officer
13 may not change the terms and conditions of the procurement
14 action, which are separate and distinct from the specifications
15 and refer to various documents such as the invitation to bid;
16 the instruction to bidders; the bid form; bonds, certificates
17 and notices; and the general and supplementary conditions to the
18 contract. "

19 Section 20. Section 13-1-106 NMSA 1978 (being Laws 1984,
20 Chapter 65, Section 79) is amended to read:

21 "13-1-106. COMPETITIVE SEALED BIDS--CORRECTION OR
22 WITHDRAWAL OF BIDS. --

23 A. A bid [~~containing a mistake discovered before bid~~
24 ~~opening~~] may be modified or withdrawn by a bidder prior to the
25 time set for bid opening in person or by delivering written [~~or~~

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1 ~~telegraphic~~] notice to the location designated in the invitation
2 for bids as the place where bids are to be received. To
3 safeguard the integrity of the bidding process, a modification
4 in bid price shall be submitted in a sealed envelope,
5 accompanied by a cover letter or written notice of explanation
6 signed by the bidder.

7 B. After bid opening, no modifications in bid prices
8 or other provisions of bids shall be permitted. A low bidder
9 alleging a material mistake of fact [~~which makes his~~] in the bid
10 [~~nonresponsive~~] submitted may be permitted to withdraw [~~its~~]
11 that bid if:

12 (1) the mistake is clearly evident [~~on the face~~
13 ~~of~~] in the bid document; or

14 (2) the bidder submits evidence [~~which~~] that
15 clearly and convincingly demonstrates that a mistake was made.

16 [~~B.-~~] C. Any decision by a procurement officer to
17 permit or deny the withdrawal of a bid on the basis of a mistake
18 contained [~~therein~~] in the bid shall be supported by a
19 determination setting forth the grounds for the decision."

20 Section 21. Section 13-1-107 NMSA 1978 (being Laws 1984,
21 Chapter 65, Section 80) is amended to read:

22 "13-1-107. COMPETITIVE SEALED BIDS--BID OPENING. --Bids
23 shall be opened publicly in the presence of one or more
24 witnesses at the time and place designated in the invitation for
25 bids. The amount of each bid and each bid item, if appropriate,

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1 and such other relevant information as may be specified by the
2 state purchasing agent or a central purchasing office, together
3 with the name of each bidder, shall be recorded, and the record
4 and each bid shall be open to public inspection at the opening
5 and later by appointment with the applicable procurement
6 officer. "

7 Section 22. Section 13-1-109 NMSA 1978 (being Laws 1984,
8 Chapter 65, Section 82) is amended to read:

9 "13-1-109. COMPETITIVE SEALED BIDS--MULTI-STEP SEALED
10 BIDDING.--Multi-step bidding is a variant of the competitive
11 sealed bidding method that may be used when the state purchasing
12 agent or a central purchasing office makes a written
13 determination that ~~[it is impractical to initially prepare~~
14 ~~specifications to support an award based on price, an invitation~~
15 ~~for bids may be issued requesting the submission of unpriced~~
16 ~~offers to be followed by an invitation for bids]~~ available
17 specifications are inadequate or are too general to permit full
18 and free competition without technical evaluation and
19 discussion. Multi-step bidding shall be a phased process that
20 combines elements of both the competitive sealed proposal
21 method, seeking necessary information or unpriced technical
22 offers in the initial phase; and regular competitive sealed
23 bidding, inviting bidders who submitted technically acceptable
24 offers in the initial phase to submit competitive sealed price
25 bids on their technical offers in the final phase. The contract

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1 shall be awarded in accordance with Section 13-1-108 NMSA 1978. "

2 Section 23. Section 13-1-110 NMSA 1978 (being Laws 1984,
3 Chapter 65, Section 83) is amended to read:

4 "13-1-110. COMPETITIVE SEALED BIDS--IDENTICAL BIDS. --When
5 competitive sealed bids are used and two or more of the bids
6 submitted are identical in price and are the [~~low~~] lowest
7 responsible bid, the state purchasing agent or a central
8 purchasing office may:

9 A. award pursuant to the multiple source award
10 provisions of Sections [~~126 and 127 of the Procurement Code~~]
11 13-1-153 and 13-1-154 NMSA 1978;

12 B. award to a resident business if the identical low
13 bids are submitted by a resident business and a nonresident
14 business;

15 C. award to a resident manufacturer if the identical
16 low bids are submitted by a resident manufacturer and a resident
17 business;

18 D. award by lottery to one of the identical low
19 bidders; or

20 E. reject all bids and resolicit bids [~~or proposals~~]
21 for the required services, construction or items of tangible
22 personal property. "

23 Section 24. Section 13-1-111 NMSA 1978 (being Laws 1984,
24 Chapter 65, Section 84, as amended) is amended to read:

25 "13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR

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1 USE. -- When a state agency or a local public body is procuring
2 professional services or when the state purchasing agent, a
3 central purchasing office or a designee of either officer makes
4 a written determination that the use of competitive sealed
5 bidding for items of tangible personal property or services is
6 either not practicable or not advantageous to the state agency
7 or a local public body, a procurement shall be effected by
8 competitive sealed proposals. Competitive qualifications-based
9 proposals shall be used for procurement of professional services
10 of architects, engineers, landscape architects and surveyors who
11 submit proposals pursuant to Sections 13-1-120 through 13-1-124
12 NMSA 1978. "

13 Section 25. Section 13-1-116 NMSA 1978 (being Laws 1984,
14 Chapter 65, Section 89) is amended to read:

15 "13-1-116. COMPETITIVE SEALED PROPOSALS--DISCLOSURE--
16 RECORD.--The contents of any proposal shall not be disclosed so
17 as to be available to competing offerors during the negotiation
18 process and prior to award. "

19 Section 26. Section 13-1-119 NMSA 1978 (being Laws 1984,
20 Chapter 65, Section 92, as amended) is amended to read:

21 "13-1-119. COMPETITIVE SEALED QUALIFICATIONS-BASED
22 PROPOSALS--ARCHITECTS--ENGINEERS--LANDSCAPE ARCHITECTS--
23 SURVEYORS--ADDITIONAL REQUIREMENTS.--In addition to compliance
24 with the requirements of Sections 13-1-112 through 13-1-114 and
25 13-1-116 through 13-1-118 NMSA 1978, a state agency or local

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1 public body, when procuring the professional services of
2 architects, landscape architects, engineers or surveyors for
3 state public works projects or local public works projects,
4 shall comply with Sections 13-1-120 through 13-1-124 NMSA 1978."

5 Section 27. Section 13-1-120 NMSA 1978 (being Laws 1984,
6 Chapter 65, Section 93, as amended) is amended to read:

7 "13-1-120. COMPETITIVE SEALED QUALIFICATIONS-BASED
8 PROPOSALS--ARCHITECTS--ENGINEERS--LANDSCAPE ARCHITECTS--
9 SURVEYORS--SELECTION PROCESS.--

10 A. For each proposed state public works project or
11 local public works project, the architect, engineer, landscape
12 architect and surveyor selection committee, state highway and
13 transportation department selection committee or local selection
14 committee, as appropriate, shall evaluate statements of
15 qualifications and performance data submitted by [~~at least~~
16 ~~three~~] all businesses in regard to the particular project and
17 may conduct interviews with and may require public presentation
18 by all businesses applying for selection regarding their
19 qualifications, their approach to the project and their ability
20 to furnish the required services.

21 B. The appropriate selection committee shall select,
22 ranked in the order of their qualifications, no less than three
23 businesses deemed to be the most highly qualified to perform the
24 required services, after considering the following criteria
25 together with any criteria, except price, established by the

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1 using agency authorizing the project:

2 (1) specialized design and technical competence
3 of the business, including a joint venture or association,
4 regarding the type of services required;

5 (2) capacity and capability of the business to
6 perform the work, including any specialized services, within the
7 time limitations, including any subconsultants and their
8 representatives, qualifications and locations;

9 (3) past record of performance on contracts with
10 government agencies or private industry with respect to such
11 factors as control of costs, quality of work and ability to meet
12 schedules;

13 (4) proximity to or familiarity with the area in
14 which the project is located;

15 (5) the amount of design work that will be
16 produced by a New Mexico business within this state; and

17 (6) the volume of work previously done for the
18 entity requesting proposals which is not seventy-five percent
19 complete with respect to basic professional design services,
20 with the objective of effecting an equitable distribution of
21 contracts among qualified businesses and of assuring that the
22 interest of the public in having available a substantial number
23 of qualified businesses is protected; provided, however, that
24 the principle of selection of the most highly qualified
25 businesses is not violated.

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1 C. Notwithstanding the requirements of Subsections A
2 and B of this section, if fewer than three businesses have
3 submitted a statement of qualifications for a particular
4 project, the committee may:

5 (1) rank in order of qualifications and submit to
6 the secretary or governing authority of the local public body
7 for award those businesses which have submitted a statement of
8 qualifications; or

9 (2) recommend termination of the selection
10 process pursuant to Section 13-1-131 NMSA 1978 and sending out
11 of new notices of the resolicitation of the proposed procurement
12 pursuant to Section 13-1-104 NMSA 1978. Any proposal received
13 in response to the terminated solicitation is not public
14 information and shall not be made available to competing
15 offerors.

16 D. The names of all businesses submitting proposals
17 and the names of all businesses, if any, selected for interview
18 shall be public information. After an award has been made, the
19 appropriate selection committee's final ranking and evaluation
20 scores for all proposals shall become public information.
21 Businesses [~~which~~] that have not been selected for a contract
22 award shall be so notified in writing within [~~twenty-one~~]
23 fifteen days after an award is made. "

24 Section 28. Section 13-1-121 NMSA 1978 (being Laws 1984,
25 Chapter 65, Section 94, as amended) is amended to read:

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1 "13-1-121. COMPETITIVE SEALED QUALIFICATIONS-BASED
2 PROPOSALS-- ARCHITECTS-- ENGINEERS-- LANDSCAPE ARCHITECTS--
3 SURVEYORS-- SELECTION COMMITTEE-- STATE PUBLIC WORKS PROJECTS. --

4 A. The secretary shall create an "architect, engineer,
5 landscape architect and surveyor selection committee" [~~is~~
6 ~~created. The committee, which shall serve~~] that serves as the
7 selection committee for state public works projects [~~except for~~
8 ~~highway projects of the state highway and transportation~~
9 ~~department, is~~]. A committee shall be composed of four members
10 as follows:

- 11 (1) one member of the agency for which the
12 project is being designed;
13 (2) the director of the property control division
14 of the general services department, who shall be chairman;
15 (3) one member designated by the architect-
16 engineer-landscape architect joint practice committee; and
17 (4) one member designated by the secretary.

18 B. The staff architect or his designee of the property
19 control division shall serve as staff to the architect,
20 engineer, landscape architect and surveyor selection committee.

21 C. The members of the architect, engineer, landscape
22 architect and surveyor selection committee shall be reimbursed
23 by the property control division for per diem and mileage in
24 accordance with the provisions of the Per Diem and Mileage Act.

25 D. The state highway and transportation department

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1 shall create a selection committee by rule, after notice and
2 hearing, [~~which~~] that shall serve as the selection committee for
3 highway projects of the department.

4 E. Each board of regents of state educational
5 institutions named in Article 12, Section 11 of the constitution
6 of New Mexico shall create a selection committee by rule, after
7 notice and hearing. The institution's director of central
8 purchasing or his designee shall serve as chairman of the
9 selection committee for public works projects of that state
10 educational institution.

11 F. The governing body of each local public body shall
12 create a selection committee by rule or ordinance, after notice
13 and hearing, that shall serve as the selection committee for
14 public works projects of that local public body."

15 Section 29. Section 13-1-122 NMSA 1978 (being Laws 1984,
16 Chapter 65, Section 95, as amended) is amended to read:

17 "13-1-122. COMPETITIVE SEALED QUALIFICATIONS-BASED
18 PROPOSALS--AWARD OF ARCHITECT, ENGINEERING, LANDSCAPE ARCHITECT
19 AND SURVEYING CONTRACTS.--

20 A. The secretary or his designee, [~~or~~] the secretary
21 of [~~the~~] highway and transportation [~~department~~] or his
22 designee, a designee of the board of regents of a state
23 educational institution or a designee of a local public body
24 shall negotiate a contract with the highest qualified business
25 for the architectural, landscape architectural, engineering or

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1 surveying services at compensation determined in writing to be
2 fair and reasonable. In making this decision, the ~~[secretary or~~
3 ~~his designee or the designee of a local public body]~~ applicable
4 negotiating party shall take into account the estimated value of
5 the services to be rendered and the scope, complexity and
6 professional nature of the services. Should the ~~[secretary or~~
7 ~~his designee or the designee of a local public body]~~ applicable
8 negotiating party be unable to negotiate a satisfactory contract
9 with the business considered to be the most qualified ~~[at a~~
10 ~~price determined to be fair and reasonable]~~, negotiations with
11 that business shall be formally terminated ~~[The secretary or his~~
12 ~~designee or the designee of a local public body shall then~~
13 ~~undertake negotiations with the second most qualified business.~~
14 ~~Failing accord with the second most qualified business, the~~
15 ~~secretary or his designee or a designee of a local public body~~
16 ~~shall formally terminate negotiations with that business. The~~
17 ~~secretary or his designee or the designee of the local public~~
18 ~~body shall then undertake negotiations with the third most~~
19 ~~qualified business. Should the secretary or his designee or a~~
20 ~~designee of a local public body be unable to negotiate a~~
21 ~~contract with any of the businesses selected by the committee,~~
22 ~~additional businesses shall be ranked in order of their~~
23 ~~qualifications and the secretary or his designee or the designee~~
24 ~~of a local public body shall continue negotiations in accordance~~
25 ~~with this section until a contract is signed with a qualified~~

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1 ~~business or the procurement process is terminated and a new~~
2 ~~request for proposals is initiated]~~ and the applicable
3 negotiating party shall undertake negotiations with the next
4 most qualified business, continuing with the process until a
5 contract is agreed to and signed with a qualified business or
6 the procurement process is terminated and a new request for
7 qualifications-based proposals is solicited.

8 B. The ~~[secretary or the representative of a local]~~
9 applicable public body shall publicly announce the business
10 selected for award.

11 C. Subconsultants listed according to Paragraph (2) of
12 Subsection B of Section 13-1-120 NMSA 1978 shall not be replaced
13 without the written consent of the using agency."

14 Section 30. Section 13-1-123 NMSA 1978 (being Laws 1984,
15 Chapter 65, Section 96, as amended) is amended to read:

16 "13-1-123. ARCHITECTURAL, ENGINEERING, LANDSCAPE
17 ARCHITECTURAL AND SURVEYING CONTRACTS. --

18 A. All architectural, engineering, landscape
19 architectural and surveying contracts ~~[between a state agency~~
20 ~~and an architect for the construction of new buildings or for~~
21 ~~the remodeling or renovation of existing buildings]~~ entered into
22 by a state agency or local public body shall contain the
23 provision that all designs, drawings, specifications, notes and
24 other work developed in the performance of the contract are the
25 sole property of ~~[this state]~~ the using agency initiating the

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1 contract.

2 B. All documents, including drawings and
3 specifications, prepared by the architect, engineer, landscape
4 architect or surveyor are instruments of professional service.
5 If the plans and specifications developed in the performance of
6 the contract shall become the property of the [~~contracting~~]
7 using agency upon completion of the work, the [~~contracting~~]
8 using agency agrees to hold harmless, indemnify and defend the
9 architect, engineer, landscape architect or surveyor against all
10 damages, claims and losses, including defense costs, arising out
11 of any reuse of the plans and specifications without the written
12 authorization of the architect, engineer, landscape architect or
13 surveyor.

14 C. A copy of all designs, drawings and other materials
15 which are the property of [~~this state~~] the using agency shall be
16 transmitted to the [~~contracting~~] using agency. The
17 [~~contracting~~] using agency shall index these materials, and a
18 copy of the index shall be provided to the appropriate records
19 center. "

20 Section 31. Section 13-1-124 NMSA 1978 (being Laws 1984,
21 Chapter 65, Section 97) is amended to read:

22 "13-1-124. STAFF ARCHITECT AND ENGINEER RATE [SCHEDULE]
23 SCHEDULES. --The secretary shall adopt by regulation [~~an~~]
24 architect and engineer rate [~~schedule which shall set the~~
25 ~~highest permissible~~] schedules to be used as a basis for

. 114249. 1

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1 negotiating for architect and engineer services, recommending
2 the range of rates for each [~~building-type~~] project-type group
3 [~~which shall be~~] defined in the regulations. The rate
4 [~~schedule~~] schedules shall be in effect upon the approval of the
5 state board of finance and compliance with the State Rules Act
6 and shall apply to all contracts between a state agency and an
7 architect [~~which~~] or engineer that are executed after the
8 effective date of the architect and engineer rate [~~schedule~~]
9 schedules. The schedules shall be subject to biennial review
10 with public hearings as required, and may be adopted by local
11 public bodies. "

12 Section 32. Section 13-1-125 NMSA 1978 (being Laws 1984,
13 Chapter 65, Section 98, as amended) is amended to read:

14 "13-1-125. SMALL PURCHASES. --

15 A. The state purchasing agent or central purchasing
16 office shall procure services, construction or items of tangible
17 personal property having a value not exceeding [~~five thousand~~
18 ~~dollars (\$5,000)] ten thousand dollars (\$10,000) in accordance
19 with the applicable small purchase regulations [~~adopted~~]
20 promulgated by the secretary, a local public body or a central
21 purchasing office that has the authority to issue regulations.~~

22 B. Notwithstanding the requirements of Subsection A of
23 this section, a central purchasing office may procure
24 professional services having a value not exceeding twenty
25 thousand dollars (\$20,000), excluding applicable state and local

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1 gross receipts taxes, except for the services of architects,
2 landscape architects, engineers or surveyors for state public
3 works projects or local public works projects, which limits for
4 such services are set forth in Section 13-1-91 NMSA 1978.

5 Procurement of professional services pursuant to this subsection
6 shall be in accordance with professional services procurement
7 regulations promulgated by the department of finance and
8 administration, the general services department or a central
9 purchasing office with the authority to issue regulations.

10 ~~[C. Notwithstanding the requirements of Subsection A~~
11 ~~of this section, a central purchasing office for a state~~
12 ~~educational institution named in Article 12, Section 11 of the~~
13 ~~constitution of New Mexico, for a state two-year post-secondary~~
14 ~~institution or for a school district as defined in the Public~~
15 ~~School Code may procure services, construction or items of~~
16 ~~tangible personal property having a value not exceeding ten~~
17 ~~thousand dollars (\$10,000) in accordance with regulations~~
18 ~~promulgated by a central purchasing office with the authority to~~
19 ~~issue regulations.~~

20 ~~D.]~~ C. Notwithstanding the requirements of Subsection
21 A of this section, and in accordance with regulations
22 promulgated by the secretary or a central purchasing office, a
23 state agency or a local public body may procure services,
24 construction or items of tangible personal property having a
25 value not exceeding ~~[five hundred dollars (\$500)]~~ one thousand

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1 dollars (\$1,000) by issuing a direct purchase order to a
2 contractor based upon the best obtainable price.

3 ~~[E.]~~ D. Procurement requirements shall not be
4 artificially divided so as to constitute either a small purchase
5 under this section or to circumvent the requirements for
6 competitive sealed bidding or competitive sealed proposal.

7 E. Notwithstanding the requirements of Subsection A of
8 this section, the state purchasing agent or a central purchasing
9 office shall direct procurement of bulk fuel, gasoline or diesel
10 in accordance with regulations promulgated by the secretary or a
11 central purchasing office with the authority to issue
12 regulations. "

13 Section 33. Section 13-1-129 NMSA 1978 (being Laws 1984,
14 Chapter 65, Section 102, as amended) is amended to read:

15 "13-1-129. PROCUREMENT UNDER EXISTING CONTRACTS. --

16 A. Notwithstanding the requirements of Sections
17 13-1-102 through 13-1-118 NMSA 1978, the state purchasing agent
18 or a central purchasing office may contract for services,
19 construction or items of tangible personal property without the
20 use of competitive sealed bids or competitive sealed proposals
21 as follows:

22 (1) at a price equal to or less than the
23 contractor's current federal supply contract price [~~(GSA)~~],
24 ~~providing~~ if the contractor has indicated in writing a
25 willingness to extend [~~such contractor~~] the contract's pricing,

1 terms and conditions to the state agency or local public body
2 and the purchase order adequately identifies the contract relied
3 upon and if the terms and conditions are reviewed and amended,
4 if necessary, to comply with the laws of New Mexico; or

5 (2) with a business which has a current exclusive
6 or nonexclusive price agreement with the state purchasing agent
7 or a central purchasing office or an external procurement unit
8 for the item of tangible personal property, services or
9 construction meeting the same standards and specifications as
10 the items to be procured if the following conditions are met:

11 (a) the contractor has indicated in writing a
12 willingness to extend the contract's pricing, terms and
13 conditions to the interested central purchasing office;

14 ~~(a)~~ (b) the total quantity purchased does
15 not exceed the quantity which may be purchased under the
16 applicable price agreement relied on; and

17 ~~(b)~~ (c) the purchase order adequately
18 identifies the price agreement relied upon.

19 B. The central purchasing office shall retain for
20 public inspection and for the use of auditors a copy of each
21 federal supply ~~contractor~~ contract or state purchasing agent
22 or central purchasing office or external purchasing unit price
23 agreement relied upon to make purchases without seeking
24 competitive bids or proposals. "

25 Section 34. Section 13-1-131 NMSA 1978 (being Laws 1984,

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1 Chapter 65, Section 104, as amended) is amended to read:

2 "13-1-131. REJECTION OR CANCELLATION OF BIDS OR REQUESTS
3 FOR PROPOSALS--NEGOTIATIONS. --

4 A. An invitation for bids, a request for proposals or
5 any other solicitation may be canceled or any or all bids or
6 proposals may be rejected in whole or in part when it is in the
7 best interest of the state agency or a local public body. A
8 determination containing the ~~[reasons]~~ justification for
9 cancellation or rejection shall be issued and shall be made part
10 of the procurement file.

11 B. If no bids or proposals are received or if all bids
12 or proposals received are unacceptable to the state purchasing
13 agent or central purchasing office and, therefore, are rejected
14 [and if the invitation for bid was for any tangible personal
15 property, construction or service], then the state purchasing
16 agent or a central purchasing office may cancel the solicitation
17 or issue a new [invitations] invitation for bids [shall be
18 requested] or request for proposals or rebid. Prior to issuing
19 a new invitation for bids or request for proposals or rebid, the
20 state purchasing office shall review the:

21 (1) list of prospective contractors to ensure the
22 correct group was solicited and, if possible, seek to identify
23 additional prospective bidders or offerors to which the new
24 invitation for bids or request for proposals or rebid or notice
25 thereof shall be sent; and

. 114249. 1

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1 (2) requirements or specifications as specified
2 in the solicitation to ensure they are reasonable, current and
3 accurate, and make changes where appropriate.

4 C. If upon rebidding the item of tangible personal
5 property, construction or services, using the same bid
6 requirements as used in the first solicitation, the bids
7 received are unacceptable, or if no bids are ~~[secured]~~ received,
8 the state purchasing agent or central purchasing office may
9 purchase the tangible personal property, construction or
10 services in the open market at the best obtainable price.

11 D. Open market negotiations shall not be authorized
12 unless the state purchasing agent or central purchasing office
13 has made a concerted effort on the rebid to address and correct
14 the reason that made the bids received on the first solicitation
15 unacceptable or made an attempt to solicit from additional
16 bidders or offerors.

17 E. Substantive changes in the requirements of the
18 first invitation for bids or request for proposals that may
19 include quality, quantity, scope of work and delivery require
20 that a new invitation for bids or request for proposals be
21 initiated. "

22 Section 35. Section 13-1-137 NMSA 1978 (being Laws 1984,
23 Chapter 65, Section 110) is amended to read:

24 "13-1-137. SALE, ACQUISITION OR USE OF PROPERTY BY A STATE
25 AGENCY OR A LOCAL PUBLIC BODY. -- Subject to the provisions of

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1 Sections 13-6-1 and 13-6-2 NMSA 1978. any state agency or local
2 public body may sell or donate property to, acquire or receive
3 property from or cooperatively use any items of tangible
4 personal property or services belonging to another state agency
5 or a local public body or external procurement unit:

6 A. in accordance with an agreement entered into with
7 the approval of the state board of finance or the [~~data~~
8 ~~processing and data communications planning council~~] chief
9 information officer of the office on information and
10 communication management, if appropriate; or

11 B. subject to the provisions of Sections 3-46-1
12 through 3-46-45; 3-54-1 through 3-54-3; 3-60-1 through 3-60-37
13 and 3-60A-1 through 3-60A-48 NMSA 1978. "

14 Section 36. Section 13-1-150 NMSA 1978 (being Laws 1984,
15 Chapter 65, Section 123, as amended by Laws 1993, Chapter 225,
16 Section 1 and also by Laws 1993, Chapter 231, Section 13) is
17 repealed and a new Section 13-1-150 NMSA 1978 is enacted to
18 read:

19 "13-1-150. [NEW MATERIAL] MULTI-TERM CONTRACTS--SPECIFIED
20 PERIOD. --

21 A. A multi-term contract for construction, services,
22 items of tangible personal property and professional services
23 may be entered into for any period of time deemed to be in the
24 best interest of the state agency or a local public body,
25 subject to the following conditions and requirements:

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1 (1) the term of the contract and conditions for
2 extension or renewal, if any, shall be included in the
3 specifications of the invitation for bids or request for
4 proposals;

5 (2) funds shall be available for the first fiscal
6 period at the time of contracting, and payment and performance
7 obligations for succeeding fiscal periods shall be subject to
8 the availability and appropriation of funds;

9 (3) if the estimated annual amount of the
10 contract is under twenty-five thousand dollars (\$25,000), and
11 for professional services in any amount, the term of the
12 contract shall not exceed four years, including all extensions
13 and renewals;

14 (4) if the estimated annual amount of the
15 contract is twenty-five thousand dollars (\$25,000) or more, the
16 term shall not exceed eight years, including all extensions and
17 renewals;

18 (5) a contract entered into pursuant to the
19 Public Building Energy Efficiency Act shall not exceed ten
20 years, including all extensions and renewals;

21 (6) services required to support or operate
22 federally certified medicaid, financial assistance and child
23 support enforcement management information or payment systems
24 may be for a term not to exceed eight years, including all
25 extensions and renewals; and

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1 (7) a multi-term contract for the services of
2 trustees, escrow agents, registrars, paying agents, letter of
3 credit issuers and other forms of credit enhancement, and other
4 similar services, excluding bond attorneys, underwriters and
5 financial advisors with regard to the issuance, sale and
6 delivery of public securities, may be for the life of the
7 securities or as long as the securities remain outstanding.

8 B. Notwithstanding the provisions of Subsection A of
9 this section, in order to remain a valid contract, provisions
10 that allow for extension or renewal of a multi-term contract
11 must be exercised, and any required action taken, while the
12 contract is in full force.

13 C. Notwithstanding the provisions of Subsection A of
14 this section, professional services contracts, which may expire
15 during the time the scope of work contracted for is in progress,
16 may be extended for the length of time required to bring the
17 project to completion. No new or additional work on the project
18 may be assigned to the contractor during the extension period.
19 The state purchasing agent or central purchasing office shall
20 issue a written determination setting forth the circumstances
21 for authorizing the extension that shall be made a part of the
22 procurement file. "

23 Section 37. Section 13-1-152 NMSA 1978 (being Laws 1984,
24 Chapter 65, Section 125) is amended to read:

25 "13-1-152. MULTI-TERM CONTRACTS-- CANCELLATION DUE TO

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1 UNAVAILABILITY OF FUNDS. -- When funds are not appropriated or
2 otherwise made available to support continuation of performance
3 of a multi-term contract in a subsequent fiscal period, the
4 contract shall be ~~[cancelled]~~ cancelled without penalty to the
5 state or local public body. "

6 Section 38. Section 13-1-153 NMSA 1978 (being Laws 1984,
7 Chapter 65, Section 126) is amended to read:

8 "13-1-153. MULTIPLE SOURCE AWARD--LIMITATIONS ON USE. -- A
9 multiple source award may be made pursuant to Section ~~[83 of the~~
10 ~~Procurement Code]~~ 13-1-110 NMSA 1978 when awards to two or more
11 bidders or offerors are necessary for adequate delivery or
12 service. If a multiple source award is anticipated, the state
13 purchasing agent or a central purchasing office shall follow the
14 requirements of Section 13-1-154 NMSA 1978, setting forth the
15 justification for a multiple source award and the criteria for
16 award shall be stated in the solicitation. Multiple source
17 awards shall not be made when a single award will meet the needs
18 of the state agency or a local public body without sacrifice of
19 economy or service. ~~[Awards shall be limited to the least number~~
20 ~~of suppliers in one geographical area necessary to meet the~~
21 ~~requirements of the state agency or a local public body. A~~
22 ~~multiple source award shall be based upon the lowest responsible~~
23 ~~bid or proposal received in each geographical area.] "~~

24 Section 39. Section 13-1-155 NMSA 1978 (being Laws 1984,
25 Chapter 65, Section 128, as amended) is amended to read:

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1 "13-1-155. PROCUREMENT OF USED ITEMS-- APPRAISAL
2 REQUIRED-- COUNTY ROAD EQUIPMENT EXCEPTION FOR AUCTIONS. --

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

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

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

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

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1 prior to the auction by a qualified disinterested appraiser
2 retained and paid by the county, who shall make a written
3 appraisal report stating the basis for the appraisal, including
4 the age, condition, range of value or target value and
5 comparable sales [~~and stating that~~] of like equipment. The
6 appraiser has exercised his independent judgment without prior
7 understanding or agreement with any person as to a target value
8 or range of value;

9 [~~(3)~~] (2) an independent "certificate of working
10 condition" shall be obtained prior to the auction from a
11 qualified mechanic who shall have made a detailed inspection of
12 each major working or major functional part and certified the
13 working condition of each; and

14 [~~(4)~~] (3) the maximum price [paid] that shall be
15 bid by the county, including all auction fees and buyer's
16 surcharges, shall not exceed the appraised value. "

17 Section 40. Section 13-1-157 NMSA 1978 (being Laws 1984,
18 Chapter 65, Section 130) is amended to read:

19 "13-1-157. RECEIPT--INSPECTION--ACCEPTANCE OR REJECTION OF
20 DELIVERIES. --

21 A. The using agency is responsible for inspecting and
22 accepting or rejecting deliveries. The using agency shall
23 determine whether the quantity is as specified in the purchase
24 order or contract and whether the quality conforms to the
25 specifications referred to or included in the purchase order or

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1 contract. If inspection reveals that the delivery does not
2 conform to the quantity or quality specified in the purchase
3 order or contract, the using agency shall immediately notify the
4 central purchasing office. The central purchasing office shall
5 notify the vendor that the delivery has been rejected and shall
6 order the vendor to promptly make a satisfactory replacement or
7 supplementary delivery. In case the vendor fails to comply, the
8 central purchasing office shall have no obligation to pay for
9 the nonconforming items of tangible personal property. If the
10 delivery does conform to the quantity and quality specified in
11 the purchase order or contract, the using agency shall certify
12 to the central purchasing office that delivery has been
13 completed and is satisfactory.

14 B. Notwithstanding the requirements of Subsection A of
15 this section, if, after delivery and acceptance of items of
16 tangible personal property, the items or a portion thereof are
17 later found to be nonconforming to the specifications referred
18 to or included in the purchase order or contract, such prior
19 acceptance does not waive any other rights or remedies that are
20 otherwise granted the buyer in accordance with other relevant
21 sections of laws of New Mexico."

22 Section 41. Section 13-1-158 NMSA 1978 (being Laws 1984,
23 Chapter 65, Section 131, as amended) is amended to read:

24 "13-1-158. PAYMENTS FOR PURCHASES. --

25 A. No warrant, check or other negotiable instrument

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1 shall be issued in payment for any purchase of services,
2 construction or items of tangible personal property unless the
3 central purchasing office or the using agency certifies that the
4 services, construction or items of tangible personal property
5 have been received and meet specifications or unless prepayment
6 is permitted under Section 13-1-98 NMSA 1978 by exclusion of the
7 purchase from the Procurement Code.

8 B. Unless otherwise agreed upon by the parties or
9 unless otherwise specified in the invitation for bids, request
10 for proposals or other solicitation, within fifteen days from
11 the date the [state] central purchasing office or [state] using
12 agency receives written notice from the contractor that payment
13 is requested for services or construction completed or items of
14 tangible personal property delivered on site and received by the
15 [state] using agency, the [state] central purchasing office or
16 [state] using agency shall issue a written certification of
17 complete or partial acceptance or rejection of the services,
18 construction or items of tangible personal property.

19 C. Upon certification by the [state] central
20 purchasing office or the [state] using agency that the services,
21 construction or items of tangible personal property have been
22 received and accepted, payment shall be tendered to the
23 contractor within sixty days of the date of certification.
24 After the sixtieth day from the date that written certification
25 of acceptance is issued, late payment charges shall be paid on

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1 the unpaid balance due on the contract to the contractor at the
2 rate of one and one-half percent per month.

3 D. Late payment charges that differ from the
4 provisions of Subsection C of this section may be assessed if
5 specifically provided for by contract or pursuant to tariffs
6 approved by the New Mexico public utility commission or the
7 state corporation commission. "

8 Section 42. Section 13-1-171 NMSA 1978 (being Laws 1984,
9 Chapter 65, Section 144, as amended) is amended to read:

10 "13-1-171. PRICE ADJUSTMENTS. -- Adjustments in price shall
11 be computed in one or more of the following ways as specified in
12 the contract:

13 A. by agreement on a fixed-price adjustment before
14 commencement of performance of the contract or as soon
15 thereafter as practicable;

16 B. by unit prices specified in the contract or
17 subsequently agreed upon by the contracting parties;

18 C. by the costs attributable to the events or
19 conditions as specified in the contract or subsequently agreed
20 upon by the contracting parties;

21 D. by a provision for both upward and downward
22 revision of stated contract price upon the occurrence of
23 specified contingencies if the contract is for commercial items
24 sold in substantial quantities to the general public with prices
25 based upon established catalogue or list prices in a form

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1 regularly maintained by the manufacturer or vendor and published
2 or otherwise available for customer inspection. In the event of
3 revision of the stated contract price, the contract file shall
4 be promptly documented by the state purchasing agent or central
5 purchasing office;

6 E. in such other manner as the contracting parties may
7 mutually agree; or

8 F. in the absence of agreement by the contracting
9 parties, by a unilateral determination reasonably computed by
10 the state [agency] purchasing agent or a [local public body]
11 central purchasing office of the costs attributable to the
12 events or conditions. "

13 Section 43. Section 13-1-172 NMSA 1978 (being Laws 1984,
14 Chapter 65, Section 145, as amended) is amended to read:

15 "13-1-172. RIGHT TO PROTEST. -- Any prospective bidder or
16 offeror who is aggrieved in connection with a solicitation, or
17 any actual bidder or offeror or who is aggrieved in connection
18 with award of a contract, may protest to the state purchasing
19 agent or a central purchasing office, whichever is responsible
20 for issuance and control of the procurement transaction in
21 question. The protest shall be submitted in writing within
22 fifteen calendar days after [knowledge] the aggrieved person
23 knows or should have known of the facts or occurrences giving
24 rise to the protest. The written protest shall include the name
25 and address of the protester; the solicitation or contract

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1 number being protested; a statement of the grounds for the
2 protest; supporting exhibits, evidence or documents to
3 substantiate any claim unless not available within the filing
4 time in which case the expected availability date shall be
5 included; and specify the ruling requested of the appropriate
6 central purchasing office."

7 Section 44. Section 13-1-174 NMSA 1978 (being Laws 1984,
8 Chapter 65, Section 147, as amended) is amended to read:

9 "13-1-174. AUTHORITY TO RESOLVE PROTESTS.--The state
10 purchasing agent or a central purchasing office, whichever is
11 responsible for issuance and control of the procurement in
12 question, or a designee of either shall have the authority to
13 take any action reasonably necessary to resolve a protest of an
14 aggrieved bidder or offeror. This authority shall be exercised
15 in accordance with regulations promulgated by the secretary, a
16 local public body or a central purchasing office which has the
17 authority to issue regulations but shall not include the
18 authority to award money damages or [~~attorneys'~~] attorney fees."

19 Section 45. Section 13-1-175 NMSA 1978 (being Laws 1984,
20 Chapter 65, Section 148) is amended to read:

21 "13-1-175. PROTEST--DETERMINATION.--The state purchasing
22 agent or a central purchasing office, whichever is responsible
23 for issuance and control of the procurement in question, or a
24 designee of either shall promptly issue a determination relating
25 to the protest. The determination shall:

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- 1 A. state the reasons for the action taken; and
2 B. inform the [~~protestant~~] protester of the right to
3 judicial review of the determination pursuant to Section [~~156 of~~
4 ~~the Procurement Code~~] 13-1-183 NMSA 1978. "

5 Section 46. Section 13-1-182 NMSA 1978 (being Laws 1984,
6 Chapter 65, Section 155) is amended to read:

7 "13-1-182. RATIFICATION OR TERMINATION AFTER AN AWARD. -- If
8 after an award the state purchasing agent or a central
9 purchasing office makes a determination that a solicitation or
10 award of a contract is in violation of law and if the business
11 awarded the contract has not acted fraudulently or in bad faith:

12 A. the contract may be appropriately amended to comply
13 with law, ratified and affirmed [~~and revised to comply with law~~]
14 by the state purchasing agent or a central purchasing office;
15 provided that a determination is made that doing so is in the
16 best interests of a state agency or a local public body; or

17 B. the contract may be terminated, and the [~~business~~]
18 contractor awarded the contract shall be compensated for the
19 actual documented expenses reasonably incurred under the
20 contract [~~plus a reasonable profit prior to termination~~]. "

21 Section 47. Section 13-1-183 NMSA 1978 (being Laws 1984,
22 Chapter 65, Section 156) is amended to read:

23 "13-1-183. JUDICIAL REVIEW - LIMITATION - VENUE. --

24 A. All actions authorized by the Procurement Code for
25 judicial review of a determination shall be based upon the

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1 records of the central purchasing office and all evidence
2 submitted by the [~~protestant~~] protestor and other interested
3 parties. All actions for judicial review [~~must~~] shall be filed
4 within thirty days of receipt of notice of the determination as
5 follows:

6 (1) in the first judicial district court in Santa
7 Fe county when the decision to be reviewed is made by a state
8 agency located in Santa Fe county; or

9 (2) in the district court in which a state agency
10 or a local public body is located when the decision to be
11 reviewed is made by a local public body or a state agency not
12 located in Santa Fe county.

13 B. All determinations under the Procurement Code made
14 by a state agency or a local public body shall be sustained
15 unless arbitrary, capricious, contrary to law, clearly erroneous
16 or not based upon substantial evidence.

17 C. Under no circumstances shall money damages,
18 attorney fees or court costs be awarded."

19 Section 48. APPROPRIATION. -- Two hundred ninety-two thousand
20 dollars (\$292,000) is appropriated from the general fund to the
21 purchasing division of the general services department for
22 expenditure in fiscal years 1998 through 2000 to acquire a
23 requisition processing system. Any unexpended or unencumbered
24 balance remaining at the end of fiscal year 2000 shall revert to
25 the general fund.

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 24, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 781

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

1. On page 18, strike all of lines 4 through 25 and on page
19, strike all of lines 1 through 18.

2. Renumber succeeding sections accordingly.

3. On page 50, strike lines 17 and 18 and insert in lieu
thereof:

"C. The court, in its discretion, may award attorney
fees and costs to a prevailing protestor in an action brought
pursuant to the provisions of this section.".,

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 781

Page 53

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and thence referred to the APPROPRIATIONS AND FINANCE
COMMI TTEE.

Respectfully submitted,

Thomas P. Foy, Chair man

Adopted _____ Not Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 781

Page 54

- 1
- 2
- 3
- 4
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- 7
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The roll call vote was 9 For 0 Against

Yes: 9

Excused: Luna, Pederson, Rios, Sanchez

Absent: None

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