STATE OF NEW MEXICO PROCUREMENT CODE
CHAPTER 13
Public Purchases and Property

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ARTICLE 1
Procurement

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B. Except as provided in Subsection C of this section, when a public body makes a purchase using a formal bid process, the public body shall deem a bid submitted by:
(1) resident business to be five percent lower than the bid actually submitted;
(2) resident veteran business with annual revenues of one million dollars ($1,000,000) or less to be ten percent lower than the bid actually submitted;
(3) resident veteran business with annual revenues of more than one million dollars ($1,000,000) but less than five million dollars ($5,000,000) to be eight percent lower than the bid actually submitted subject to the limitation provided in Subsection G of this section; and
(4) resident veteran business with annual revenues of five million dollars ($5,000,000) or more to be seven percent lower than the bid actually submitted subject to the limitation provided in Subsection G of this section.
C. When a public body makes a purchase using a formal bid process and the bids are received for both recycled content goods and non-recycled content goods, the public body shall deem:
(1) bids submitted for recycled content goods from any business, except a resident veteran business, to be five percent lower than the bids actually submitted;
(2) bids submitted for recycled content goods from a resident veteran business with annual revenues of one million dollars ($1,000,000) or less to be ten percent lower than the bids actually submitted;
(3) bids submitted for recycled content goods from a resident veteran business with annual revenues of more than one million dollars ($1,000,000) but less than five million dollars ($5,000,000) to be eight percent lower than the bids actually submitted subject to the limitation provided in Subsection G of this section; and
(4) bids submitted for recycled content goods from a resident veteran business with annual revenues of five million dollars ($5,000,000) or more to be seven percent lower than the bids actually submitted subject to the limitation provided in Subsection G of this section.
D. When a public body makes a purchase using a formal request for proposals process, not including contracts awarded on a point-based system, the public body shall award an additional:
(1) five percent of the total weight of all the factors used in evaluating the proposals to a resident business;
(2) ten percent of the total weight of all the factors used in evaluating the proposals to a resident veteran business that has annual revenues of one million dollars ($1,000,000) or less;
(3) eight percent of the total weight of all the factors used in evaluating the proposals to a resident veteran business that has annual revenues of more than one million dollars ($1,000,000) but less than five million dollars ($5,000,000) subject to the limitation provided in Subsection G of this section; and
(4) seven percent of the total weight of all the factors used in evaluating the proposals to a resident veteran business that has annual revenues of five million dollars ($5,000,000) or more subject to the limitation provided in Subsection G of this section.
E. When a public body makes a purchase using a formal request for proposals process, and the contracts are awarded based on a point-based system, the public body shall award an additional of the equivalent of:
(1) five percent of the total possible points to a resident business;
(2) ten percent of the total possible points to a resident veteran business that has annual revenues of one million dollars ($1,000,000) or less;
(3) eight percent of the total possible points to a resident veteran business that has annual revenues of more than one million dollars ($1,000,000) but less than five million dollars ($5,000,000) subject to the limitation provided in Subsection G of this section; and
(4) seven percent of the total possible points to a resident veteran business that has annual revenues of five million dollars ($5,000,000) or more subject to the limitation provided in Subsection G of this section.
F. When a joint bid or joint proposal is submitted by a combination of resident veteran, resident or nonresident businesses, the preference provided pursuant to Subsection B, C, D or E of this section shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each business as specified in the joint bid or proposal.
G. The preference pursuant to Paragraphs (3) and (4) of Subsection B of this section, Paragraphs (3) and (4) of Subsection C of this section, Paragraphs (3) and (4) of Subsection D of this section and Paragraphs (3) and (4) of Subsection E of this section shall be limited, in any calendar year, to an

A. For purposes of this section:
1. "Business" means a commercial enterprise carried on for the purpose of selling goods or services, including growing, producing, processing or distributing agricultural products;
2. "formal bid process" means a competitive sealed bid process;
3. "formal request for proposals process" means a competitive sealed proposal process, including a competitive sealed qualifications-based proposal process;
4. "public body" means a department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the execution, legislative or judicial branch of the government of the state or a political subdivision of the state and the agencies, instrumentalties and institutions thereof, including two-year post-secondary educational institutions, school districts, local school boards and all municipalities, including home-rule municipalities;
5. "residential business" means a business that has a virtual residential business certificate issued by the taxation and revenue department pursuant to Section 15-1-25 NMSA 1978; and
6. "recycled content goods" means supplies and materials composed twenty-five percent or more of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.

B. When a public body makes a purchase using a formal bid process, the public body shall deem a bid submitted by a residential business to be five percent lower than the bid actually submitted.

C. When a public body makes a purchase using a formal request for proposals process:
1. Five percent of the total weight of all the factors used in evaluating the proposals shall be awarded to a residential business possessing a valid residential business certificate;
2. if the contract is awarded based on a point-based system, a residential business shall be awarded the equivalent of five percent of the total possible points to be awarded based on the residential business possessing a valid residential business certificate.

D. When a joint bid or joint proposal is submitted by both residential and nonresidential businesses, the residential business preference provided pursuant to Subsection B or C of this section shall be reduced in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by a nonresidential business as specified in the joint bid or proposal.

E. If the bids are received for both recycled content goods and nonrecycled content goods, the public body shall deem the bids submitted for recycled content goods of equal quality to be five percent lower than the bids actually submitted. A bid calculation pursuant to this subsection for a residential business shall not exceed the preference pursuant to Subsection B of this section.

F. The procedures provided in Sections 15-1-175 through 15-1-183 NMSA 1978 or in an applicable purchasing ordinance shall apply in a protest to a public body concerning the awarding of a contract in violation of this section.

G. This section shall not apply when the expenditure includes federal funds for a specific purpose.


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13-1-22. Resident business, resident veteran business, resident contractor and resident veteran contractor certification.  

A. To receive a resident business or resident veteran business preference pursuant to Sections 13-1-21.1 NMSA 1978 or as a resident contractor or resident veteran contractor preference pursuant to Section 13-1-21.2 NMSA 1978, a business or contractor shall submit with its bid a proposal of a valid resident business certificate, valid resident veteran business certificate, valid resident contractor certificate or valid resident veteran contractor certificate issued by the taxation and revenue department.

B. An application for a resident business certificate shall include an affidavit from a certified public accountant stating that the business is licensed to do business in the state and that:

1. the business has paid property taxes or rent on real property in the state and paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit; and

2. if the business is a new business, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit and has not applied for a resident building or resident contractor certificate pursuant to this section during that time period.

C. If the business is a relocated business, at least eighty percent of the total proceeds of the business in the prior year immediately preceding the submission of the affidavit have been spent for real property or personal property greater than one hundred thousand dollars ($100,000) in value in the state.

D. If the business is a previously certified business as eligible for certification, the business has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same commercial enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

E. An application for a resident veteran business certificate shall include the affidavit required by Subsection B of this section, an affidavit from a certified public accountant providing the prior year's annual revenue of the resident veteran business.

F. Application for resident veteran business status as indicated by the United States department of defense DOD form 214 of release or discharge from active duty with an honorable discharge or service-disabled veteran status by the department of veterans affairs and proof that a veteran of veteran's spouse is majority of the business.

G. An application for a resident contractor certificate shall include an affidavit from a certified public accountant stating that the contractor is currently licensed as a contractor in this state and that:

1. the contractor has:
   a. registered with the state at least one vehicle; and
   b. in each of the five years immediately preceding the submission of the affidavit, paid property taxes or rent on real property in the state and paid at least one other tax administered by the state;

2. if the contractor is a new contractor, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the five years immediately preceding the submission of the affidavit but has not applied for a resident business or resident contractor certificate pursuant to this section during that time period; and

3. if the contractor is a relocated contractor, at least eighty percent of the total proceeds of the business in the prior year immediately preceding the submission of the affidavit have been spent for real property or personal property greater than one hundred thousand dollars ($100,000) in value in the state.

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and that, prior to the submission of the affidavit, the contractor either leased real property for ten years or purchased real property greater than one hundred thousand dollars ($100,000) in value in the state; or
E. If the contractor is a previously certified contractor or was eligible for certification, the contractor has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.
E. An application for a resident veteran contractor certificate shall include the affidavit required by Section D of this section, an affidavit from a certified public accountant providing the previous three years’ annual revenues for the resident veteran contractor and:
(1) Verification by the federal department of veterans affairs or being either a veteran-owned small business or a service-disabled veteran-owned small business; or
(2) Verification of veteran status as indicated by the United States department of defense DD form 214 of release or discharge from active duty with an honorable discharge or of service-disabled veteran status by the department of veterans affairs and proof that a veteran or veteran owns a majority of the business.
F. The taxation and revenue department shall prescribe the form and content of an application for certification and required affidavits. The taxation and revenue department shall examine the application and affidavit and, if necessary, may seek additional information to ensure that the business or contractor is eligible as the certificate pursuant to the provisions of this section. If the taxation and revenue department determines that an applicant is ineligible, the department shall issue a certificate pursuant to the provisions of this section. If the taxation and revenue department determines that the applicant is not eligible, the department shall issue notification within thirty days. If no notification is provided by the department, the certificate is deemed approved. A certificate is valid for three years from the date of its issuance; provided that if there is a change of ownership of more than fifty percent, a resident business, resident veteran business, resident contractor or resident veteran contractor shall reaply for a certificate.
G. A business or contractor whose application for a certificate is denied has fifteen days from the date of the taxation and revenue department’s decision to file an objection with the taxation and revenue department. The person filing the objection shall submit evidence to support the objection. The taxation and revenue department shall review the evidence and issue a decision within fifteen days of the filing of the objection.
H. If, following a hearing and an opportunity to be heard, the taxation and revenue department finds that the business or contractor provided false information to the taxation and revenue department in order to obtain a certificate or that a business or contractor used a certificate to obtain a resident business, resident veteran business, resident contractor or resident veteran contractor preference for a bid or proposal and the resident business, resident veteran business, resident contractor or resident veteran contractor did not perform the percentage of the contract specified in the bid or proposal, the business or contractor may not be eligible to receive a certificate or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA 1978 for a period of five years from the date on which the taxation and revenue department became aware of the submission of the false information or the failure to perform the contract as specified in the bid or proposal; and
(2) is subject to an administrative penalty of up to fifty thousand dollars ($50,000) for each violation.
I. In a decision issued pursuant to Subsection G or H of this section, the taxation and revenue department shall state the reasons for the action taken and inform an aggrieved business or contractor of the right to judicial review of the determination pursuant to the provisions of Section 50-5-1.1 NMSA 1978.
J. The taxation and revenue department may assess a reasonable fee for the issuance of a certificate to cover the actual cost of administering the taxation and revenue department’s duties pursuant to this section.
K. The state auditor may audit or review the issuance or validity of certificates.
L. For purposes of this section:
(1) "new business" means a person that did not exist as a business in any form and that has been in existence for less than three years;
(2) "new contractor" means a person that did not exist as a business in any form and that has been in existence for less than five years;
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15-1-22

Resident business and resident contractor certification. (Effective July 1, 2022)

A. To receive a resident business preference pursuant to Section 15-1-21 NMRA 1978 or a resident contractor preference pursuant to Section 15-4-11 NMRA 1978, a business or contractor shall submit with its bid or proposal a copy of a valid resident business certificate or valid resident contractor certificate issued by the taxation and revenue department.

B. An application for resident business certificates shall include an affidavit from a certified public accountant stating that the business is licensed to do business in this state and that:

1. The business has paid its taxes or收到了 real property in the state and that at least one other tax administered by the state is each of the three years immediately preceding the submission of the affidavit.

2. If the business is a new business, the owner or majority of owners has paid property taxes or received real property in the state and has paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit.

3. If the business in a resident business, at least eighty percent of the personnel of the business have resided in the state for at least thirty (30) days immediately preceding the submission of the affidavit.

4. In the case of the submission of the affidavit, the business has real property that has been purchased for residential property greater than one hundred thousand dollars ($100,000) in value in the state, or

5. The business has paid at least forty percent of the property tax on that property and

6. That the affidavit has been signed by a registered public accountant or a notary public in the state.

(c) "Resident contractor" means a contractor that has been licensed in this state for ten consecutive years;

(d) "Resident business" means a business that has paid eighty percent of its total gross personal income to the state for the past ten years.

merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

C. An application for a resident contractor certificate shall include an affidavit from a certified public accountant certifying that the business is currently licensed as a contractor in this state and that:

(1) the contractor has:
(a) registered with the state at least one vehicle; and
(b) in each of the five years immediately preceding the submission of the affidavit, 1 paid property taxes on real property in the state and paid at least one other tax administered by the state; and 2 paid unemployment insurance on at least three full-time employees who are residents of the state; provided that if a contractor is a legacy contractor, the requirement of at least three full-time employees who are residents of the state is waived; and

(2) if the contractor is a new contractor, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the five years immediately preceding the submission of the affidavit; and has not applied for a resident business or resident contractor certificate pursuant to this section during that time period;

(3) if the contractor is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit are residents of the state and that, prior to the submission of the affidavit, the contractor either leased real property for ten years or purchased real property greater than one hundred thousand dollars ($100,000) in value in the state or

(4) if the contractor is a previously certified contractor, it was eligible for certification, the contractor has obtained its name has registered a state or more different legal entities, has purchased by another legal entity but operates in the state as substantially the same commercial enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

D. The taxation and revenue department shall prescribe the form and content of the application and required affidavit. The taxation and revenue department shall examine the application and affidavit and, if necessary, may seek additional information to ensure that the business or contractor is eligible to receive the certificate. The provisions of this section. If the taxation and revenue department determines that an applicant is eligible, the department shall issue a certificate pursuant to the provisions of this section. If the taxation and revenue department determines that the applicant is not eligible, the department shall issue notification within thirty days. If no notification is provided by the department, the certificate is deemed approved. A certificate is valid for three years from the date of its issuance; provided that if there is a change of ownership of more than fifty percent, a resident business or resident contractor shall reapply for a certificate.

E. A business or contractor whose application for a certificate is denied has fifteen days from the date of the taxation and revenue department's decision to file an objection with the taxation and revenue department. The person filing the objection shall submit evidence to support the objection. The taxation and revenue department shall review the evidence and issue a decision within fifteen days of the filing of the objection.

F. If following a hearing and an opportunity to be heard, the taxation and revenue department finds that an business or contractor provided false information to the taxation and revenue department in order to obtain a certificate or that a business or contractor used a certificate to obtain a resident business or resident contractor certificate for a bid or proposal and the resident business or contractor did not disclose the percentage of the contract specifically for the bid or proposal, such certificate is not eligible to receive a certificate or a preference pursuant to Section 19-3:21 or 22-4-47 NMSA 1978 for a period of five years from the date on which the taxation and revenue department received the submission of the false information or the failure to perform the contract as specified in the bid or proposal, and

(1) is not eligible to receive a certificate or a preference pursuant to Section 19-3:21 or 22-4-47 NMSA 1978 for a period of five years from the date on which the taxation and revenue department received the submission of the false information or the failure to perform the contract as specified in the bid or proposal; and

(2) shall be subject to an administrative penalty of up to fifty thousand dollars ($50,000) for each violation.

G. In a decision issued pursuant to Subsection B or F of this section, the taxation and revenue department shall state the reasons for the action taken and inform an aggrieved business or contractor of the right to judicial review of the determination pursuant to the provisions of Section 19-3:21 NMSA 1978.

The taxation and revenue department may assess a reasonable fee for the issuance of a certificate not exceed the actual cost of administering the taxation and revenue department's duties pursuant to this section.

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13-1-27 PROCUREMENT

i. The state auditor may audit or review the issuance or validity of certificates.

j. For purposes of this section:
   (1) "new business" means a person that did not exist as a business in any form and that has been in existence for less than three years;
   (2) "new contractor" means a person that did not exist as a business in any form and that has been in existence for less than five years.
   (3) "legacy contractor" means a business that has been licensed in this state for ten consecutive years; and
   (4) "licensed business" means a business that noted eighty percent of its total home run personne from another state to New Mexico in the past five years.


Repairs and replacements. — Laws 2022, ch. 21, § 1, repealed for Laws 2014, ch. 104, § 1, and subject the provisions set out above, effective April 1, 2023.

13-1-23 to 13-1-27. Repealed.


Sections 13-1-28 through 13-1-29 NMSA 1978 may be cited as the "Procurement Code."

History: Laws 1984, ch. 43, § 1; 2006, ch. 23, § 1.

The 2006 amendment, effective March 2, 2006, changed the number of lawyers required to the NMSA reference.


A. The Procurement Code (Sections 13-1-28 through 13-1-29 NMSA 1978) shall be liberally construed and applied to promote its purposes and policies.

B. All references in law to the Public Purchase Act [speaking] shall be construed to be references to the Procurement Code.

C. The purposes of the Procurement Code are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.

History: Laws 1984, ch. 43, § 2.

Reframed material. — The material revised was inserted by the compiler and is not part of the law.

The Public Purchase Act, referred to in subdivision b, was amended in 1983, to 13-1-27 NMSA 1978, and was repealed by Laws 1984, ch. 43, § 170, effective November 1, 1984.

ANNOATIONS


Breach of implied contract to furnish Procurement Code. — By legally intervening, complicating, and enabling a solicitation not described in the request, the city breached an implied contract that it would follow the Procurement Code (Sections 13-1-28 through 13-1-29 NMSA 1978) and the purchasing manual in awarding such bids. Thus, though no formal contract was ever entered into between the parties, the city's conduct was a breach of an implied contract for which damages will lie. Planning & Design Solutions v. City of Santa Fe, 119 N.M. 797, 876 P.2d 859 (1995).

Amended subsections only. — Reading the Pro- curement Code, Sections 13-1-28 through 13-1-29 NMSA 1978; and the Construction Industry Li- censing Act, Chapter 40, Article 12, NMSA 1978, together, it is clear that the legislature intended 11 the public agencies should be awarded only to 12 their伙伴关系 and 2 the purpose of this act and 2006, ch. 23, § 1.

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13-1-30. Application of the code.

A. Except as otherwise provided in the Procurement Code (Sections 13-1-28 through 13-1:199 NMSA 1978), that code shall apply to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction. That code also applies to concession contracts at the New Mexico state fair in excess of twenty thousand dollars ($20,000), whether those concession contracts generate revenue and earnings or expand funds.

B. When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be in compliance with the Procurement Code.


The 2003 amendment, effective July 1, 2003, amended Subsection A to provide that the Procurement Code increase the applicability of the code for concession contracts at the state fair from ten to twenty thousand dollars.

The 1994 amendment, effective July 1, 1994, in Subsection A, deleted "and providing" "construction" and added the language following "construction".

ANNOTATIONS


Private non-profit corporations. -- The standard to be applied when determining whether private non profit corporations that lease hospital from government entities meet the definition of "local public bodies" under this section and if so, whether on the Procurement Code (Sections 13-1-10 through 13-1:199 NMSA 1978) to the extent the administrator receives compensation an amount exceeding $30,000, although the administrator's sole compensation under the contract derives from such compensation, etc., from the underwriters. Austin, 461 Ariz. 73.

Federal law govern state agency on aging's designation of area agencies on aging, and such area agencies need not comply with solicitation standards under this title. 1961, Op. Att'y Gen. No. 15-77.

Purchase of computer voting devices. -- Section 13-1-14 NMSA 1978, governing computer voting devices, does not bar application of the Procurement Code (Sections 13-1-28 through 13-1:199 NMSA 1978) to purchase of internal computers used to create and tabulate votes. and the Procurement Code applies to purchase. 角. Juno, 461 Ariz. 73.

Private non-profit corporations. -- The standard to be applied when determining whether private non profit corporations that lease hospital from government entities meet the definition of "local public bodies" under this section and if so, whether on the Procurement Code (Sections 13-1-10 through 13-1:199 NMSA 1978) to the extent the administrator receives compensation an amount exceeding $30,000, although the administrator's sole compensation under the contract derives from such compensation, etc., from the underwriters. Austin, 461 Ariz. 73.

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Private non-profit corporations. -- The standard to be applied when determining whether private non profit corporations that lease hospital from government entities meet the definition of "local public bodies" under this section and if so, whether on the Procurement Code (Sections 13-1-10 through 13-1:199 NMSA 1978) to the extent the administrator receives compensation an amount exceeding $30,000, although the administrator's sole compensation under the contract derives from such compensation, etc., from the underwriters. Austin, 461 Ariz. 73.
13-1-32. Definition; blind trust.

"Blind trust" means a trust managed by a person other than the employee-beneficiary in which the employee-beneficiary is not given notice of allocations in the property of the trust.

History: Laws 1984, ch. 69, § 2.

13-1-33. Definition; brand-name specification.

"Brand-name specification" means a specification limited to describing an item by manufacturer's name or catalogue number.


13-1-34. Definition; brand-name or equal specification.

"Brand-name or equal specification" means a specification describing one or more items by manufacturer's name or catalogue number to indicate the standard of quality, performance or other pertinent characteristics and providing for the substitution of equivalent items.


13-1-35. Definition; business.

"Business" means any corporation, partnership, individual, joint venture, association or any other private legal entity.


13-1-36. Definition; catalogue price.

"Catalogue price" means the price of items of tangible personal property in the most current catalogue, price list, schedule or other form that:

A. Is regularly maintained by the manufacturer or vendor of an item; and
B. Is either published or otherwise available for inspection by a customer.


13-1-37. Definition; central purchasing office.

"Central purchasing office" means that office or officer within a state agency or a local public body responsible for the centralization of procurement of items of tangible personal property, services or construction. Central purchasing office includes the purchasing division of the general services department and the state purchasing agent.

History: Laws 1984, ch. 65, § 10.

13-1-38. Definition; change order.

"Change order" means a written order signed and issued by a procurement officer directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order with or without the consent of the contractor.

History: Laws 1984, ch. 65, § 11.

13-1-39. Definition; confidential information.

"Confidential information" means any information which is available to an employee because of the employee's status as an employee of a state agency or a local public body and which is not a matter of public knowledge or available to the public on request.
13-1-40. Definition; construction.
A. "Construction" means building, altering, repairing, installing or demolishing in the ordinary course of business any:
(1) road, highway, bridge, parking area or related project;
(2) building, stadium or other structure;
(3) airport, subway or similar facility;
(4) park, trail, athletic field, golf course or similar facility;
(5) dam, reservoir, canal, ditch or similar facility;
(6) sewage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility;
(7) sewage, water, gas or other pipeline;
(8) transmission line;
(9) radio, television or other tower;
(10) water, oil or other storage tank;
(11) shaft, tunnel or other mining appurtenance;
(12) electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditioners;
(13) air conditioning conduit, heating or other similar mechanical work; or
(14) similar work, structures or installations.
B. "Construction" shall also include:
(1) leveling or clearing land;
(2) excavating earth;
(3) drilling wells of any type, including seismic shot holes or core drilling; and
(4) similar work, structures or installations.


13-1-40.1. Definition; construction management and construction manager.
A. "Construction management" means consulting services related to the process of management applied to a public works project for any duration from conception to completion of the project for the purposes of cost control, time, cost and quality of the project.
B. "Construction manager" means a person who acts as an agent of the state agency or local public body for construction management, for whom the state agency or local public body shall assume all the risks and responsibilities.


13-1-41. Definition; contract.
"Contract" means any agreement for the procurement of items of tangible personal property, services or construction.


ANNOTATIONS
Formation of contract. — A contract was not formed when the Human Services Department solicited a bid pending General Service Department approval and legislative appropriation, since the pending actions were not mere legal formalities, but conditions precedent to contract formation. Wimberly v. Human Servs. Dept., 1956 NMSC 511, 26 N.M. 141, 100 P.2d 96.

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13-1-42. Definition; contract modification.

"Contract modification" means any written alteration to the provisions of a contract accomplished by mutual written agreement of the parties to the contract.


13-1-43. Definition; contractor.

"Contractor" means any business having a contract with a state agency or a local public body.


13-1-44. Definition; cooperative procurement.

"Cooperative procurement" means procuring, conducting, or on behalf of more than one state agency or local public body, or by a state agency or local public body with an internal procurement unit.

History: Laws 1984, ch. 65, § 17.

13-1-45. Definition; cost analysis.

"Cost analysis" means the evaluation of cost data and profit for the purpose of arriving at costs actually incurred by a contractor, estimates of costs to be incurred by a contractor and a profit to be allowed to a contractor.

History: Laws 1984, ch. 65, § 18.

13-1-46. Definition; cost data.

"Cost data" means factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred by a contractor or which have been actually incurred by a contractor in performing the contract.

History: Laws 1984, ch. 65, § 19.

13-1-47. Definition; cost reimbursement contract.

"Cost reimbursement contract" means a contract which provides for a fee other than a fee based on a percentage of cost and under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms.


13-1-29. Definition; data.

"Data" means recorded information regardless of form or characteristic.

History: Laws 1984, ch. 65, § 22.

13-1-50. Definition; definite quantity contract.

"Definite quantity contract" means a contract which requires the contractor to furnish a specified quantity of services, items of tangible personal property or construction at or within a specified time.
13-1-51. Definition; designee.

"Designee" means a representative of a person holding a superior position.


13-1-52. Definition; determination.

"Determination" means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

History: Laws 1984, ch. 65, § 25.

13-1-53. Definition; direct or indirect participation.

"Direct or indirect participation" means involvement through decision, approval, disapproval, recommendation, formulation of any part of a purchase request, influencing the content of any specification, investigation, auditing or the rendering of advice.


13-1-53.1. Definition; electronic.

"Electronic" includes electric, digital, magnetic, optical, electronic or similar medium.


13-1-54. Definition; employee.

"Employee" means an individual receiving a salary, wages or per diem and mileage from a state agency or a local public body whether elected or not and any uncompensated individual performing personal services as an elected or appointed official or otherwise for a state agency or a local public body.

History: Laws 1984, ch. 65, § 27.

13-1-55. Definition; engineering services.

"Engineering services" means any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering studies and the review of construction for the purpose of ascertaining substantial compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects or industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic or thermal nature, unless as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Such services includes the performance of architectural work incidental to the practice of engineering. "Engineering services" does not include responsibility for the superintendence of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place.

13-1-56. Definition; external procurement unit.

"External procurement unit" means any procurement organization not located in the state which, in the good faith judgment of the state, would qualify as a state agency or a local public body. An agency of the United States government is an external procurement unit.

History: Laws 1964, ch. 65, § 28.

13-1-57. Definition; financial interest.

"Financial interest" means:

1. Having any interest in, or controlling, directing, or managing, or participating in, any enterprise engaged in procurement, or

2. Ownership of more than five percent interest in any business.

History: Laws 1964, ch. 65, § 28.

13-1-58. Definition; firm fixed price contract.

"Firm fixed price contract" means a contract which has a fixed total price or fixed unit price.

History: Laws 1964, ch. 65, § 71.

13-1-59. Definition; gratauity.

"Gratauity" means a payment, loan, subscription, advance, deposit of money, security, or anything of more than nominal value, received or promised, unless consideration of substantially equal or greater value is exchanged.

History: Laws 1964, ch. 65, § 32.

13-1-60. Definition; heavy road equipment.

"Heavy road equipment" means any motor driven vehicle or supermarket capable of lifting or moving equipment which has an aggregate value or price of over one thousand dollars ($1,000).

History: Laws 1964, ch. 65, § 32.

13-1-61. Definition; highway reconstruction.

"Highway reconstruction" means the rebuilding, altering or repairing of any road, highway, bridge, parking area or related project. "Highway reconstruction" does not include routine maintenance.

History: Laws 1964, ch. 65, § 34.

13-1-62. Definition; immediate family.

"Immediate family" means a spouse, child, parent, brother or sister.

History: Laws 1964, ch. 65, § 55.

13-1-63. Definition; indefinite quantity contract.

"Indefinite quantity contract" means a contract which requires the contractor to furnish an indefinite quantity of specified services, items of tangible personal property or construction during a prescribed period of time at a definite unit price or at a specified discount from list or catalogue prices.

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History: Laws 1984, ch. 65, § 36.

13-1-64. Definition; invitation for bids.

"Invitation for bids" means all documents, including those attached or incorporated by reference, utilized for soliciting sealed bids.

History: Laws 1984, ch. 65, § 37.

13-1-65. Definition; surveying services.

"Surveying services" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for;

A. the measuring and locating of lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, area and volume;
B. the measurement of property boundaries and the plotting and survey of lands and subdivisions thereof;
C. the application of photogrammetric methods used to derive topographic and other data;
D. the establishment of horizontal and vertical controls for surveys for design, topographic surveys including photogrammetric methods, construction surveys for engineering and architectural public works; and
E. the preparation and presentation of maps, records, plans, field notes and property descriptions.


13-1-66. Definition; landscape architectural services.

"Landscape architectural services" means services including but not limited to consultation, investigation, recommission, research, design, preparation of drawings and specifications and administration of contracts where the dominant purpose of such services are:
A. the preservation or enhancement of land uses and natural features;
B. the location and construction of functional approaches for structures, pathways or walkways; or
C. the design of trails, plantings and landscape irrigation. Excluded from the provisions of this section are the services of architects, engineers and surveyors as defined in the Procurement Code [Sections 13-1-28 through 13-1-109 NMSA 1978].

History: Laws 1984, ch. 65, § 2; 1988, ch. 69, § 1. Cross references. — For licensing of landscape architects, see Chapter 61, Article 31B NMSA 1978.

13-1-66.1. Definition; local public works project.

"Local public works project" means a project of a local public body that uses architectural or engineering services requiring professional services costing fifty thousand dollars ($50,000) or more or landscape architectural or surveying services requiring professional services costing ten thousand dollars ($10,000) or more, excluding applicable state and local gross receipts taxes.

History: 1978 Comp., § 13-1-66.1, enacted by Laws 1989, ch. 69, § 6; 1990, ch. 72, § 1; 2007, ch. 315, § 1. The 2007 amendment, effective June 15, 2007, increased the minimum amount of a local public works project requiring professional services from $25,000 to $50,000 and landscape architectural or surveying services from $5,000 to $10,000.

The 1993 amendment, effective June 18, 1993, covered this section, which read: "Local public works project means a project of a local public body which uses architectural landscape architectural engineering or surveying services requiring professional services costing fifteen thousand dollars ($15,000) or more, excluding applicable state and local gross receipts taxes."
13-1-67. Definition; local public body.

"Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as excepted pursuant to the Procurement Code (Sections 13-2-28 through 13-1-199 NMSA 1978).


The 1996 amendment, effective June 30, 1996 added "school districts and local school boards and municipalities, except as excepted pursuant to the Procurement Code," at the end of the section.

The 1999 amendment, effective June 16, 1999, added "including two-year post-secondary educational institutions" at the end of the section.

ANNOTATIONS

Municipality and school district within definition. — A municipality and a school district fall within the definition of "local public body" in this section, and, thus, a transaction involving the purchase of water services by the school district from the water utility of the municipality is within the exemption contained in subsections 4 and D of section 13-1-65 NMSA 1978 because the municipality is a local public body serving a public utility; and the school district is a local public body serving a public utility.

13-1-68. Definition; multi-year contract.

"Multi-year contract" means a contract having a term longer than one year.

History: Laws 1984, ch. 45, § 41.

ANNOTATIONS

County published publishing board affected. — Under the former Public Purchases Act, a county fair

13-1-69. Definition; multiple source award.

"Multiple source award" means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one bidder or offeror.

History: Laws 1984, ch. 45, § 42.

12-1-70. Definition; notice of invitation for bids.

"Notice of invitation for bids" means a document issued by a procurement officer which contains a brief description of the services, construction or items of tangible personal property to be procured, the location where copies of the invitation for bid may be obtained, the location, where bids are to be received, the cost, if any, for copies of plans and specifications, the date and place of the bid opening and such other information as the procurement officer deem necessary.

History: Laws 1984, ch. 45, § 53.

13-1-71. Definition; price agreement.

"Price agreement" means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction in a stated quantity or a local utility body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

History: Laws 1984, ch. 45, § 44.

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13-1-72. Definition; price analysis.

"Price analysis" means the evaluation of pricing data without analysis of the separate cost components and profit.

History: Laws 1984, ch. 65, § 45.

13-1-73. Definition; pricing data.

"Pricing data" means factual information concerning prices for items identical to or substantially similar to those being procured.

History: Laws 1984, ch. 65, § 46.

13-1-74. Definition; procurement.

"Procurement" means:

A. purchasing, renting, leasing, lease purchasing or otherwise acquiring items of tangible personal property, services or construction; and
B. all procurement functions, including but not limited to preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration.

History: Laws 1984, ch. 65, § 47.

13-1-75. Definition; procurement officer.

"Procurement officer" means any person or a designee authorized by a state agency or a local public body to enter into or administer contracts and make written determinations with respect thereto.


13-1-76. Definition; professional services.

"Professional services" means the services of architects, archaeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services, which may be designated as such by a determination issued by the state purchasing agent or a central purchasing office.


Cross references. — For professional and occupational licenses, see Chapter 61 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted the language beginning "construction managers and" for "end persons or businesses providing similar services" at the end of the section.

13-1-77. Definition; purchase order.

"Purchase order" means the document issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction.


The 2001 amendment, effective July 1, 2001, deleted "pursuant to an existing contract" from the end of the section.

13-1-78. Definition; purchase request.

"Purchase request" means the document by which a unit agency requests that a contract be obtained for a specified service, construction or item of tangible personal property and may include but is not limited to the technical descriptive of the requested item, delivery schedule, transportation requirements, suggested source of supply and supporting information.

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13-1-79. Definition; qualified products list.

"Qualified products list" means a list of items of tangible personal property described by model or catalogue number which, prior to the submission of competitive sealed bids or competitive sealed proposals, are being the state purchasing agent or a central purchasing office that determined will meet the applicable specifications.

History: Laws 1984, ch. 65, § 55.

13-1-80. Definition; regulation.

"Regulation" means any rule, order or statement of policy, including amendments thereof, issued by a state agency or a local public body to effectuate not members or employees of the issuing agency.

History: Laws 1984, ch. 65, § 53.

13-1-81. Definition; request for proposals.

"Request for proposals" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

History: Laws 1984, ch. 65, § 52.

13-1-82. Definition; responsible bidder.

"Responsible bidder" means a bidder who submits a responsive bid and who has furnished, when required, information and data in prove that his financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the invitation for bids.

History: Laws 1984, ch. 65, § 55.

13-1-83. Definition; responsible offeror.

"Responsible offeror" means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

History: Laws 1984, ch. 65, § 56.

13-1-84. Definition; responsive bid.

"Responsive bid" means a bid which conforms in all material respects to the requirements set forth in the invitation for bids. Material respects of a bid include but are not limited to price, quality, quantity or delivery requirements.


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Responsible bid must be in writing and respond to all solicitation requirements. (See 490 U.S.C. 1968). Bid must incorporate public works minimum wage rates. — A bid is not a responsible bid when it

13-1-85. Definition; responsive offer.

"Responsive offer" means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for a proposal include, but are not limited to, price, quality, quantity or delivery requirements.

History: Laws 1984, ch. 65, § 46.

13-1-86. Definition; secretary.

"Secretary" means the secretary of general services.


13-1-87. Definition; services.

"Services" means the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports and other materials which are essentially incidental to the required performance. "Services" includes the furnishing of insurance but does not include construction or the services of employees of a state agency or a local public body.

History: Laws 1984, ch. 65, § 42.

13-1-88. Definition; small business.

"Small business" means a business, not a subsidiary or division of another business, having an average annual volume for the preceding three fiscal years which does not exceed one million five hundred thousand dollars ($1,500,000).

History: Laws 1984, ch. 65, § 61.

13-1-89. Definition; specification.

"Specification" means a description of the physical or functional characteristic or of the nature of items of tangible personal property, services or construction. "Specification" may include a description of any requirements for inspecting or testing, or for preparing items of tangible personal property, services or construction for delivery.

History: Laws 1984, ch. 65, § 62.

13-1-90. Definition; state agency.

"State agency" means any department, commission, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. "State agency" includes the purchasing division of the general services department and the state purchasing agent but does not include local public bodies.

History: Laws 1984, ch. 65, § 62.
13-1-01. Definition; state public works project.

"State public works project" means a project of a state agency not including projects of the state educational institutions, the supreme court building commission, the legislature or local public bodies, that uses architectural or engineering services requiring professional services costing fifty thousand dollars ($50,000) or more, excluding applicable state and local gross receipts taxes.

History: Laws 1964, ch. 63, s. 46; 1996, ch. 69, s. 1 & 2; 1997, ch. 122, s. 1; 1997, ch. 122, s. 2; 2007 Multiple Amendments. — Laws 2007, ch. 112, s. 4 & 61; Laws 2007, ch. 112, s. 5 & 6. See also advisory opinion 10-1-2007 No. 1775, in text below.

Laws 2007, ch. 318, s. 2 (not set out above), effective June 30, 2007, increased the minimum size of a state public works project requiring professional services from $15,000 to $50,000 or landscape architectural or surveying services from $5,000 to $10,000.

Laws 2007, ch. 312, s. 4 (not set out below), effective July 1, 2007, increased the maximum size of professional services to $100,000 and provided:

"13-1-01. Definition; state public works project.

"State public works project" means a project of a state agency not including projects of the state educational institutions, the supreme court building commission, the legislature or local public bodies, that uses architectural or engineering services requiring professional services costing fifty thousand dollars ($50,000) or more, excluding applicable state and local gross receipts taxes.

The 1997 amendment, effective June 30, 2007, deleted "highway projects of the state highway and transportation department," of the following set including "the beginning and reimbursement "the third municipal project is approved for "fifteen thousand dollars ($15,000) or more at the end of the section.

The 1992 amendment, effective June 14, 1991, substituted "architectural or engineering services requiring professional services costing fifty thousand dollars ($50,000) or more, or landscape architectural or surveying services requiring professional services costing fifteen thousand dollars ($15,000) or more" for "architectural, landscape architectural, engineering or surveying services requiring professional services totaling fifteen thousand dollars ($15,000) or more".

Laws 1981, ch. 66, s. 2 (not set out above), effective July 1, 1981, increased the minimum size of a state public works project requiring professional services from $15,000 to $50,000 or landscape architectural or surveying services from $5,000 to $10,000.

Laws 1978, ch. 403, s. 1, effective April 25, 1978, increased the minimum size of a state public works project requiring professional services from $5,000 to $15,000 or landscape architectural or surveying services from $2,500 to $5,000.

Laws 1976, ch. 403, s. 1, effective April 20, 1976, increased the maximum size of professional services to $30,000 and provided:

"13-1-01. Definition; state public works project.

"State public works project" means a project of a state agency not including projects of the state educational institutions, the supreme court building commission, the legislature or local public bodies, that uses architectural or engineering services requiring professional services costing fifty thousand dollars ($50,000) or more, excluding applicable state and local gross receipts taxes.

The 1976 amendment, effective April 20, 1976, substituted "architectural or engineering services requiring professional services costing $15,000 or more, or landscape architectural or surveying services costing $5,000 or more" for "use of architectural, landscape architectural, engineering or surveying services totaling $15,000 or more".

Laws 1972, ch. 403, s. 1, effective April 19, 1972, increased the minimum size of a state public works project requiring professional services from $5,000 to $15,000 or landscape architectural or surveying services from $2,500 to $5,000.

Laws 1972, ch. 403, s. 1, effective April 19, 1972, increased the minimum size of a state public works project requiring professional services from $5,000 to $15,000 or landscape architectural or surveying services from $2,500 to $5,000.

Laws 1970, ch. 403, s. 1, effective April 24, 1970, increased the minimum size of a state public works project requiring professional services from $5,000 to $15,000 or landscape architectural or surveying services from $2,500 to $5,000.

Laws 1968, ch. 184, s. 46, effective May 26, 1968, increased the minimum size of a state public works project requiring professional services from $15,000 to $50,000 or landscape architectural or surveying services from $5,000 to $15,000.

Laws 1964, ch. 63, s. 46, effective March 1, 1964, increased the minimum size of a state public works project requiring professional services from $15,000 to $50,000 or landscape architectural or surveying services from $5,000 to $15,000.

Laws 1964, ch. 63, s. 46, effective March 1, 1964, increased the minimum size of a state public works project requiring professional services from $15,000 to $50,000 or landscape architectural or surveying services from $5,000 to $15,000.

13-1-02. Definition; state purchasing agent.

"State purchasing agent" means the director of the purchasing division of the general service department.

History: Laws 1984, ch. 65, s. 46.

13-1-03. Definition; tangible personal property.

"Tangible personal property" means tangible property other than real property having a physical existence, including but not limited to supplies, equipment, materials and printed materials.

History: Laws 1984, ch. 65, s. 46.

13-1-04. Definition using agency.

"Using agency" means any state agency or local public body requiring services, construction or items of tangible personal property.

History: Laws 1984, ch. 65, s. 46, effective April 2, 1984.

"Annotators: When using the same terminology and interpretation are not making "purchasing". — State Fair Commission.

13-1-05. Purchasing division director; state purchasing agent; appointment; duties.

A The 'purchasing division' is created within the general service department.

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B. Subject to the authority of the secretary, the state purchasing agent shall be the administrator and chief executive of the purchasing division. The state purchasing agent shall be appointed by the secretary with the approval of the governor.

C. The purchasing division and state purchasing agent shall be responsible for the procurement of services, construction, and items of tangible personal property for all state agencies except as otherwise provided in the Procurement Code [Sections 13-1-28 through 13-1-199 NMSA 1978] and shall administer the Procurement Code for those state agencies not excluded from the requirement of procurement through the state purchasing agent.

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

(1) Recommend procurement regulations to the secretary.
(2) Establish and maintain programs for the development and use of procurement specifications and for the inspection, testing and acceptance of services, construction and items of tangible personal property.
(3) Cooperate with the state budget division of the department of finance and administration in the preparation of statistical data concerning the acquisition and usage of all services, construction and items of tangible personal property by state agencies.
(4) Require state agencies to furnish reports concerning usage, needs and stock on hand of items of tangible personal property, and usage and costs for services or construction.
(5) Prescribe, with respect of the secretary, forms to be used by state agencies in requisition and report the procurements of items of tangible personal property, services, and construction.
(6) Provide information to state agencies and local public bodies concerning the development of specifications, quality control methods and other procurement information; and
(7) Collect information concerning procurement matters, quality and quantity control of commodities, services, construction and items of tangible personal property.

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

History: Laws 1986, ch. 65, § 65.

ANNOATIONS

Am. 1986, ch. 65, §§ 65, 66

13-1-05.1. Electronic transmissions.

A. The state purchasing agent shall develop guidelines for central purchasing offices to use electronic media, including distribution of specifications and acceptance of sealed bids and competitive sealed proposals that include electronic signatures. The guidelines shall include:

(1) Appropriate security to prevent unauthorized access to electronically submitted bids or proposals prior to the date and time set for opening of bids or the deadline set for receipt for proposals, including the electronic biding, approval and award process; and
(2) Accurate retrieval or conversion of electronic forms of information into a medium that permits inspection and copying.

B. A central purchasing office in an invitation for bids or a request for proposals, may require all or any part of a sealed bid or a competitive sealed proposal to be submitted electronically if the office determines that an electronic submission will be advantageous to the procurement process. An electronic submission is required:

(1) If hand written documentation shall be submitted to the central purchasing officer prior to the award of the contract, except as specifically identified in the invitation for bids or the request for proposals;
(2) The invitation for bids or request for proposals shall specify an opening date and time, a fixed sealing date and time and an e-mail account or other secure electronic location to which the electronic bid or proposal shall be submitted;
(3) Sealed bids submitted electronically shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and each bidder, if appropriate, and other relevant information as may be specified by the state purchasing agent or a central purchasing office, together with the name of each bidder, shall be recorded, and the record and each bid shall be open to public inspection; and

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15-1-96. Delegation of authority by the state purchasing agent.

The state purchasing agent may, with the consent of the secretary, delegate such of his authority to subordinates as he deems necessary and appropriate to carry out the duties imposed upon him.

History: Laws 1984, ch. 65, § 68.


A. All procurement for state agencies shall be performed by the state purchasing agent except as otherwise provided in this Code, and all purchases for state agencies shall be made through the central purchasing office designated by the secretary of the state agency or its designee as provided in this Code.

B. All procurement for local public bodies shall be performed by a central purchasing office designated by the governing authority of the local public body except as otherwise provided in this Code.

History: Laws 1984, ch. 65, § 70.

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Violation of former act. — Appointment of a local public body or entity to serve as a purchasing agent for the state, subchapter II, section 15-1-95, for the purpose of making purchases for the state, is a violation of the statute under which these purchases are to be made.

When former act not voided. — The state purchasing agent's contract with a private company for the purchase of goods and services for the state, as provided by the former Public Purchases Act, was not voided when the state purchasing agent purchased goods and services from a private company for the state, and the state purchasing agent's contract with the private company was not voided.

Group insurance. — Exemptions for the statutory authority to conduct business as a purchasing agent, public purchasing office, or purchasing agent, and the authority to conduct business as a purchasing agent.

Lessor purchases. — Lessor purchases are not exempt from the requirement to provide written notice to the state, as provided by the former Public Purchases Act, and the state purchasing agent is not required to provide written notice to the state.

Disposition of former public purchases. — The state purchasing agent is not required to provide written notice to the state, as provided by the former Public Purchases Act, and the state purchasing agent is not required to provide written notice to the state.

Delegation restricted. — Under the former Public Purchases Act, the authority to delegate the performance of Purchasing to another state agency or another state purchasing office, and the authority to delegate the performance of Purchasing to another state agency or another state purchasing office, is not restricted.

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13-1-97.1, Repealed.

Repeals—Laws 2012, ch. 52, § 1 repealed 13-1-97.1 NMRS 1978, as enacted by Laws 2009, ch. 107, § 1, relating to the state contracts database effective May 18, 2012. For provisions of former section, see the 2011 NMSSA in New Mexico One Source of Law

13-1-98. Exemptions from the Procurement Code. The provisions of the Procurement Code (Sections 13-1-26 through 13-1-199 NMSSA 1978) shall not apply to:

A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or a local procurement unit entered as otherwise provided in Sections 13-1-16 through 13-1-137 NMSSA 1978;
B. procurement of tangible personal property or services for the governors mansion and grounds;
C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;
D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;
E. purchases of books and periodicals from the publishers or copyright holders thereof;
F. travel or shipping by common carrier or by private conveyance to or from rallies and lodging;
G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibition;
H. contracts with businesses for public school transportation services;
I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-90 NMSSA 1978, by the correctional industries division of the corrections department pursuant to rules adopted by the correctional industries commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;
J. minor purchases not exceeding five thousand dollars ($5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;
K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;
L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of local bonds and general financial statements;
M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-37 NMSSA 1978;
N. contracts for maintenance of grounds and facilities at highway rest stops and other stops and other similar opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private nonprofit agencies to provide services to persons with handicaps;
O. contracts and expenditures for services or items of tangible personal property to be paid or compensated for by monies or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;
P. contracts for retirement and other benefits pursuant to Sections 29-11-47 through 29-11-52 NMSSA 1978;
Q. contracts with professional entertainers;
R. expenditures and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including surveys, mediators, court reporters, process servers and witnesses fees, but not including attorney contracts;
S. contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection 1 of Section 5-54-14, 1 NMSSA 1978 and in county improvement districts pursuant to Subsection 1 of Section 4-65A-121 NMSSA 1978;
T. works of art for museums or for display in public buildings or places;
U. contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 32, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSSA 1978, lease or provision of a county hospital pursuant to the Hospital Funding Act [Chapter 4, Article 48BNMSSA 1978], or operation and maintenance of a hospital pursuant to the Special Hospital Districts Act [Chapter 4, Article 48ANMSSA 1978].

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v. purchase of advertising in all media, including radio, television, print and electronic;
W. purchase of promotional products for use by the department;
X. procurement of printing services for materials produced and intended for resale by the cultural affairs department;
Y. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other special needs, and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the expenditures apply only to procurement of services not to exceed two hundred thousand dollars ($200,000).
Z. procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Act (15-1-1 through 15-1-7 NMSA 1978).
AA. purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973.
BB. procure, by either the department of health or county units or boards, of tangible personal property or services or construction that are exempt from the Procurement Code, pursuant to Section 9-7-9 (G) NMSA 1978.
CC. contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employee Retirement Act (Chapter 13, Article 10 NMSA 1978).
DD. the purchase for resale by the state fish commission of fish and other items necessary for the operation of the hatchery;
EE. contracts entered into by the crime victims' compensation commission to distribute federal grants to assist victims of crime, including grants from the federal Victims of Crime Act and the federal Violence Against Women Act.

History. Laws 1984, ch. 64, § 72; 1987, ch. 6, § 1.
1992, ch. 218, § 8; 1996, ch. 27, § 1; 2001, ch. 28, § 1; 2004, ch. 31, § 1; 2005, ch. 31, § 1; 2009, ch. 31, § 1;
2011, ch. 9, § 1; 2013, ch. 9, § 1; 2016, ch. 9, § 1; 2021, ch. 9, § 1; 2023, ch. 9, § 1.

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Applicability — When a local public body acquire property or services from a joint purchasing agency of local public bodies, the provision is not subject to any restrictions of the Procurement Code (Sections 12-1-20 through 15-1-129 NMSA 1978) except that such act does not fall within Sections 12-1-73, 12-1-106, and 12-1-137; as such, Section 15-1-73 does not exempt the procurement of goods or services by the joint agency from an outside vendor. State ex rel. Arizona Educators' Ass'n v. Univ. Sys. Edna. Servs., 125 N.M. 135, 960 P.2d 1124 (1998).

Applicability of section to municipal districts — The provision of Section 15-2-48 NMSA 1978 of the Public School Code, requiring that agents for expenditures of money be made in accordance with the Procurement Code (Sections 12-1-20 through 15-1-129 NMSA 1978), required school boards to proceed according to (A) but with two exceptions of the entire Procurement Code, that proves that all buying requirements of the code, including the provisions in this provision, apply to school district contracts. McFarland Water Users Ass'n v. Rehoboth Min. Sch. Dist., No. 13-18- NM 357, 907 P.3d 72 (2015).


Role of state services in municipal districts to school districts — A municipality or a school district fall within the definition of "local public body" in Section 15-2-48 NMSA 1978, and, thus, a transaction involving the purchase of water services by the state services in the manner provided by Section 9-6-1 NMSA 1978, is subject to the requirements of the Procurement Code.
school drainage from the water utility of the municipality is within, the exceptions of Subsections A and D because the property is in a local public body area under the authority of the local public body and the school district is purchasing "publicly provided" water. Morriner Water Users Area v. Farmington Mun. Sch. Dist. No. 5, 320 N.M. 307, 692 P.2d 745 (1985).

Emergency requirements not applicable to exempt transactions. — The emergency provisions of Section 13-1-101 NMRA 1978 did not apply to a contract for the purchase of water services by a school district from the water utility of a municipality which was within the exemptions contained in Subsections A and D of this section. Morriner Water Users Area v. Farmington Mun. Sch. Dist. No. 5, 320 N.M. 307, 692 P.2d 745 (1985).

Scope of exemption provision. — Only wheninand content control was thought to be harmful or unproductive of savings were exemptions allowed by the former Public Purchases Act. 1969 Op. Ariz. Gen. No. 69-07.

When public notice and competitive bidding required. — A professional legal service contract of $1,000 between a state agency and legislative may be awarded only after public notice and competitive bidding, 1979 Op. Ariz. Gen. No. 79-20.


13-1-98.1. Hospital and health care exemption.

The provisions of the Procurement Code (Sections 13-1-25 through 13-1-119 NMRA 1978) shall not apply to procurement of some tangible personal property or services by a state agency or a local public body through:

A. an agreement with any other state agency, local public body or external procurement unit or any person, corporation, organization or association that provides that the part or the agreement shall join together for the purpose of making some or all purchases necessary for the operation of public hospitals or public and private hospitals, if the state purchasing agent or the central purchasing office makes a determination that the arrangement will or is likely to reduce health care costs, or

B. an agreement with any other state agency, local public body or external procurement unit or corporation, organization or association that provides that the purpose of the arrangement is to work or the central purchasing office makes a determination that the arrangement will or is likely to reduce health care costs, improve quality of care or improve access to care.

History: Laws 1996, ch. 69, § 1.

13-1-98.2. Additional exceptions from the Procurement Code.

The provisions of the Procurement Code (Sections 13-1-25 through 13-1-119 NMRA 1978) do not apply to contracts entered into by a local public body with a person, firm, organization, corporation, association or state educational institution named in Article 12, Section 11 of the constitution of New Mexico for:

A. the operating and maintenance of a hospital pursuant to Chapter 3, Article 44 NMRA 1978;

B. the lease or operation of a county hospital pursuant to the Hospital Funding Act (Chapter 4, Article 48NMRA 1978); or

C. the operation and maintenance of a hospital pursuant to the Special Hospital District Act (Chapter 4, Article 48ANMAR 1978); or

D. the use of county buildings pursuant to Section 4-38-13.1 NMRA 1978.

History: Laws 2003, ch. 197, § 1; 2009, ch. 155, § 12.

The 2009 amendment, effective June 19, 2009, added Subsection E.

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13-1-99. Excluded from central purchasing through the state purchasing agent.

Excluded from the requirement of procurement through the state purchasing agent but not from the requirements of the Procurement Code (Sections 13-1-23 through 13-1-104 NMSA 1978) are the following:

A. procurement of professional services;
B. small purchases having a value not exceeding one thousand five hundred dollars ($1,500);
C. emergency procurement;
D. procurement of highway construction or reconstruction by the department of transportation;
E. procurement by the judicial branch of state government;
F. procurement by the legislative branch of state government;
G. procurement by the boards of Regents of state educational institutions named in Articles 3, Section 13 of the constitution of New Mexico;
H. procurement by the board of education of rural school districts under the state’s financial assistance program for rural education; and
I. any other cases in which it is specifically provided that the state may authorize exceptions; or that it is a part of which, an educational institution, or participating in the New Mexico educational system, and
J. procurement by the public school facilities authority.


The 1997 amendment, effective June 13, 2007, excluded procurement by the state law commission under $20,000.

The 2006 amendment, effective March 4, 2006, added subsection (N) to central purchasing by a public school facilities authority.

The 2001 amendment, effective July 1, 2001, amended subsection (K) to change the name of the department and increase the state’s commission excluding from central purchasing from $5,000 to $15,000.

The 2001 amendment, effective July 1, 2001, added subsection (N) to central purchasing by a public school facilities authority.

The 2003 amendment, effective July 1, 2003, added subsection (O) to central purchasing by a public school facilities authority.

13-1-100. Construction contracts central purchasing office.

The award and execution of contracts for major construction, including but not limited to roads, bridges, airports, buildings and dams, shall be made by the governing authority of the using agency. The procurement officer responsible for the procurement shall give notice to prospective bidders pursuant to Section 13-1-104 NMSA 1978.

History: Laws 1971, ch. 61, § 2; 1973, ch. 66, § 2.

Cross references. — For public works contracts, see 34-4-1 NMSA 1978 et seq.

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Constitutional challenge to state construction facilities. — Former section 13-1-22 NMSA 1978 did not
provide the department of corrections fees for the services of the state construction manager. For the purposes of awarding an electrical contract for work at a state correctional facility, State v. Alegria Indegen, Corp., 169 N.M. 311, 734 P.3d 539 (1987).

13-1-1001. Construction contracts; construction management services.

A. A construction management services contract may be entered into for any construction of state or local public works project when a state agency or local public body makes a determination that it is in the public's interest to utilize construction management services. Construction management services shall not duplicate and be in addition to the required services of separate architect or engineer contractors, the need for which may arise due to the complexity or unusual requirements of a project as requested by a state agency or local public body.

B. To issue fair, uniform, clear and effective procedures that will strive for the delivery of a quality project, on time and within budget, the secretary, in conjunction with the appropriate and affected professional associations and contractors, shall promulgate regulations, which shall be adopted by the governing bodies of all using agencies and shall be followed by all using agencies when procuring construction management services as authorized in Subsection A of this section.

C. A state agency shall make the decision on a construction management services contract for a state public works project, and a local public body shall make the decision for a local public works project. A state agency shall not make the decision on a construction management services contract for a local public works project.

History: 1970 Comp., § 13-1-100.1, enacted by Laws 1979, ch. 171, 1, 3.


13-1-102. Competitive sealed bids required.

All procurement shall be accomplished by competitive sealed bid pursuant to Section 13-1-100 through 13-1-110 NMSA 1978, except procurement achieved pursuant to the following sections of the Procurement Code (Sections 13-1-28 through 13-1-110 NMSA 1978): A. Sections 13-1-117 through 13-1-122 NMSA 1978, competitive sealed proposals; B. Section 13-1-117 NMSA 1978, small purchases; C. Section 13-1-118 NMSA 1978, sole source procurement; D. Section 13-1-117 NMSA 1978, emergency procurement; E. Section 13-1-117 NMSA 1978, existing contracts; F. Section 13-1-118 NMSA 1978, purchases from minority business minority business and 

G. the New Mexico Facility Construction Manager Act (NMSA 13-1-124.1 NMSA 1978).


Cross references — For Ration_Comm. Acts, see 6-1, 5-1, 5-2, 5-3, 5-4, 2-11, 2-12 NMSA 1978.

For regulations from RationComm. Acts, see 6-1, 2-12 NMSA 1978.

The 2007 amendment, effective April 2, 2007, added Subsection G.

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When lowest bid not best bid. — The school board, if it has reserve figures as to disposal showing the lowest bid not to be the best bid because of such matters as operating expenses, may award the contract to a higher bidder. 1931-54 Up. Astry Gen. No. 44-50.35.

Effect on lease purchase. — A lease purchase of property by a school district is exempted from the statement Act Sections 6-6-1, 6-62 to 4-5-19 NMSA 1978, but was subject to the former Public Purchases Act in respect to bidding requirements. 1964 op. Astry Gen. No. 64-141.

Purchases of group insurance. — The purchase of group insurance by employees of state agencies was required to be made in compliance with the former Public Purchases Act including the requirement for bids. 1968 Op. Astry Gen. No. 50-137.

Contract renewal. — A renewal of a contract which was for a definite term is a new and separate contract; it was therefore required to meet the requirements of the former Public Purchases Act. 1906 Op. Astry Gen. No. 60-40.

Substitute or exchange. — If there is to be a trade-in or exchange of used vehicles as part payment in a purchase price, the bid procedures to be followed is that for the total consideration and not what may be the bid of the seller when the bid is the difference.

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13-1-103. Invitation for bids.

A. An invitation for bids shall be issued and shall include the specifications for the services, construction or items of tangible personal property to be procured, all contractual terms and conditions applicable to the procurement, the location where bids are to be received, the date and place of the bid opening and the requirements for complying with any applicable in-state preference provisions as provided by law.

B. If the procurement is to be by sealed bid without electronic submission, the invitation for bids shall include the location where bids are to be received and the time and place of the bid opening.

C. If the procurement is to be by sealed bid with part or all of the bid to be submitted electronically, the invitation for bids shall comply with the requirements of Section 13-1-95.1 NMSA 1978.

History: Laws 2006, ch. 65, § 6; 2007, ch. 233, § 24; 2013 (64th Leg., 2nd Sess.), ch. 1, § 3.

The 2013 amendment, effective October 1, 2013, requires that invitations for bids include a statement of the requirements for complying with the applicable federal procurement, and as subsection A, after "place of the bid opening," added the remainder of the sentence.

The 2007 amendment, effective March 2, 2006, added subsection B to provide that if the procurement is a bid without electronic submission, the invitation for bids shall include the location where bids are to be received and the time and place of the bid opening.

The 2006 amendment added subsection C to require that invitations for bids include the location where bids are to be submitted electronically.

23-1-104. Competitive sealed bids; public notice.

A. An invitation for bids or a notice thereof shall be published not less than ten calendar days prior to the time set forth for the opening of bids. In the case of procurements made by the state purchasing agent, the invitation or notice shall be published at least once in at least three newpapers of general circulation in the state; in addition, an invitation or notice may be published electronically on the state purchasing agent's website that is maintained for that purpose. In the case of procurements made by other central purchasing offices, the invitation or notice shall be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located. These requirements of publication are in addition to any other procedures that may be adopted by central purchasing offices to notify prospective bidders that bids will be received, including publication as a trade journal, if available, of those newspaper general circulation in the area in which the central purchasing office is located and other notice may be given that is commercially reasonable.

B. Central purchasing offices shall send copies of the notice or invitation for bids involving the expenditure of more than twenty thousand dollars ($20,000) to those agencies that have signed a written agreement with the state purchasing agent or the central purchasing office in the state and that are responsible to the state purchasing agent or a central purchasing office for the expenditure of more than twenty thousand dollars ($20,000) for that purpose.

C. A central purchasing office may notify the requirements of bidding to prospective bidders by electronic means. Central purchasing offices shall not require that prospective bidders receive a notice or invitation for bids through electronic media.


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D. In this section, "prospective bidders" includes persons considering submission of a bid as a general contractor for the construction contract and persons who may submit bids to a general contractor for work to be subcontracted pursuant to the construction contract. Central purchasing offices shall make copies of invitations for bids for construction contracts available to prospective bidders. A central purchasing office may require prospective bidders who have requested documents for bid on a construction contract to pay a deposit for a copy of the documents for bid. The deposit shall equal the full cost of reproduction and delivery of the documents for bid. The deposit, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within the time limits specified in the documents for bid, which time limits shall be no less than 30 calendar days from the date of the bid opening. All refunded deposits shall be credited to the funds of the applicable central purchasing office.


Cross references. For publication of public notice, see 413-2-1 NMSA, 378 et seq.

The 2005 amendment, effective July 1, 2005, increased the maximum expenditure for purchases from $25,000 to $30,000 in Subsection B.

The 2001 amendment, effective July 1, 2001, added the language beginning "In addition, an invitation or notice to the end of the second sentence in Subsection A. Added "The state purchasing agent and all" from the beginning of the first sentence and "The state purchasing agent or" from the beginning of the second sentence in Subsection B. Added Subsection C. Repealed former Section 13-3-105.

Subsection D deleted. 'The state purchasing agent or all' from the beginning of the second sentence. 'The state purchasing agent or' from the beginning of the first sentence and made a stylistic change in percent Subsection D.

The 1995 amendment, effective June 14, 1995, substituted "shall" for "must" in the second sentence of Subsection A, and substituted "ten thousand dollars ($10,000)" for "first thousand dollars ($1,000)" in Subsection B.

The 1993 amendment, effective June 14, 1993, substituted "shall" for "must" in the second sentence of Subsection A and added the first sentence in Subsection C.


A. Bids shall be unconditionally accepted for consideration for awards without alteration or correction, except as authorized in the Procurement Code Sections 13-1-26 through 13-1-105 NMSA 1978. In addition to the requirements for the prime contractor and subcontractors to be registered as provided in Section 13-1-11 NMSA 1978, bids shall be evaluated based on the requirements set forth in the invitation for bids, which requirements may include criteria to determine acceptability such as inspection, testing quality, workmanship, delivery and statutory for a particular purpose. These criteria may include, but not be limited to, cost and travel costs that affect the bid price, which shall be objectively measurable, which shall be defined by rule. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. A bid submitted by a prime contractor that was not awarded a contract by Section 13-4-12.1 NMSA 1978 shall be not considered for award. A bid submitted by a registered prime contractor that includes any subcontractor that is not registered in accordance with this section or Section 13-4-20 NMSA 1978 shall be considered for award. A bid submitted by a registered prime contractor that includes any subcontractor that is not registered in accordance with this section or Section 13-4-20 NMSA 1978 shall be considered for award. A bid submitted by a registered prime contractor that includes any subcontractor that is not registered in accordance with this section or Section 13-4-20 NMSA 1978 shall be not considered for award. A bid submitted by a registered prime contractor that includes any subcontractor that is not registered in accordance with this section or Section 13-4-20 NMSA 1978 shall be not considered for award.

B. If the lowest responsible bid has otherwise qualified, and if there is no change in the original terms and conditions, the lowest bidder may negotiate with the purchaser for a lower bid in order to avoid rejection of all bids for the reason that the lowest bid was too percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budgeted project funds.

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Evaluation of bids. — All the acts in connection with the bids, including the preliminary meeting and final meeting, shall be held in accordance therewith. The highest responsible bidder shall be accepted as the lowest responsible bidder for purposes of this section. The contract shall be subject to the written award. A written award shall be tendered to the lowest responsible bidder for the purpose. The contract shall be subject to the written award. A written award shall be tendered to the lowest responsible bidder for the purpose.


The 2006 amendment, effective July 17, 2005, in Subsection A, added the requirement that prime contractors and subcontractors be registered and that bids be evaluated, provided that a bid submitted by a prime contractor who has not registered shall be considered for award, and provided that a bid by a registered prime contractor that includes a bid by any subcontractor who is not registered may be considered for award after the evaluation of a registered subcontractor for any unregistered subcontractor.
13-1-106. Competitive sealed bids; correction or withdrawal of bids.

A. A bid containing a mistake discovered before bid opening may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written or telegraphic notice to the bondman designated in the invitation for bids as the place where bids are to be received. After bid opening, no modifications in bid prices or other provisions of a bid shall be permitted. A new bidder alleging a material mistake of fact which makes bids submitted nonresponsive may be permitted to withdraw its bid if:

(1) The mistake is clearly evident on the face of the bid document;

(2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

B. Any decision by a procuring officer to permit or deny the withdrawal of a bid on the basis of a mistake contained therein shall be supported by a determination setting forth the grounds for the decision.

History: Laws 1986, ch. 65, § 70.

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Section not applicable to executed contracts. — While this section may prevent modification of bid prices after bid opening, it does not address contracts or contracts modifications or retrievals. Review this section retroactive to bids and non-contracts, if it is non-applicable and it does not prevent contract modifications based upon mutual mistake discovered after contract formation. Halbfeld v. Shores, 117 N.M. 1, 869 P.2d 660 (1994).


Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and each bid item, if appropriate, and each such relevant information as may be specified by the state purchasing agent or a central purchasing office, together with the name of each bidder, shall be recorded, and the record and each bid shall be open to public inspection.

History: Laws 1986, ch. 65, § 60.

13-1-108. Competitive sealed bids; award.

A contract awarded by competitive sealed bids shall be awarded with reasonable promptness by written notice to the lowest responsible bidder. Contracts awarded by competitive sealed bids shall require that the bid amount include the applicable state gross receipts tax or applicable local option tax but such the contracting agency shall be required to pay the applicable tax including any increase in the applicable tax becoming effective after the date the contract is entered into. The applicable gross receipts tax or applicable local option tax shall be shown on a separate amount on each bid or request for payment made under the contract.


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When the state purchasing agent or a central purchasing office makes a determination that it is impractical to initially prepare specifications to support an award based on price, it is invited for bids may be terming requesting the submission of shortened offers to be followed by an invitation for bids.

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13-1-110. Competitive sealed bids; identical bids.

When competitive sealed bids are used and two or more of the bids submitted are identical in price and are the low bid, the state purchasing agent or a central purchasing office may:
A. award the contract to the lowest bidder;
B. award to a resident business if the identical low bids are submitted by a resident business and a nonresident business;
C. award to a resident manufacturer if the identical low bids are submitted by a resident manufacturer and a nonresident business;
D. award by lottery to one of the identical low bidders, or
E. reject all bids and request bids or proposals for the required services, construction or items of tangible personal property.

History: Laws 1984, ch. 63, § 83.

13-1-111. Competitive sealed proposals; conditions for use.

A. Except as provided in Subsection C of Section 13-1-129:1 NMSA 1978, when a state agency or a local public body is procuring professionals services or a design and build project delivery system, or when the state purchasing agent, a central purchasing office or a designee of either office (office) makes a written determination that the use of competitive sealed bidding for items of tangible personal property or services is either not practicable or not advantageous to the state agency or a local public body, a procurement shall be effected by competitive sealed proposals.
B. Competitive sealed proposals may also be used for contracts for construction and facility maintenance, service and repairs.
C. Competitive sealed proposals may also be used for construction manager at risk contracts if a three-step selection procedure is used pursuant to the Educational Facility Construction Manager at Risk Act (15-1-124.5 through 15-1-124.5 NMSA 1978).
D. Competitive qualifications-based proposals shall be used for procurement of professional services of architects, engineers, landscape architects, construction managers and surveyors who submit proposals pursuant to Sections 13-1-120 through 15-1-124.5 NMSA 1978.
E. Competitive sealed proposals shall also be used for contracts for the design and installation of measures the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act (Chapter 6, Articles 53 NMSA 1978).


Bracketed material.—The bracketed word "of firm" was inserted by the compiler to correct an apparent error and is not part of the law.

The 2007 amendment, effective April 3, 2007, added Subsection C.

The 2006 amendment, effective June 21, 2005, added Subsection D to provide that competitive sealed proposals shall be used for contracts for the design and installation of natural resource conservation measures, including guaranteed utility savings contracts pursuant to the Public Facility Energy and Water Conservation Act.

The 2003 amendment, effective June 20, 2003 inserted the subsection designation A and added present subsection B. Inserted "Competitive" made proposals may also be used for contracts for construction and facility maintenance, service and repairs following "competitive sealed proposals" near the middle of present Subsection A.

The 1999 amendment, effective June 18, 1999, added the exception at the beginning of the section.

The 1997 amendment, effective June 30, 1997, in the first sentence, inserted "as a design and build project delivery system", "written", and "for items of tangible personal property or services" and, in the second sentence, inserted "construction manager".

ANNOTATIONS

Outpatient clinics.—County was required to enter into a contract with a private, for-profits group to provide a county outpatient clinic in the county, but the county could not award the proposed contract to the group since the county did not award the proposed contract to the group since the county did not award the proposed contract to the group. 1997 Op. Att'y Gen. No. 87-74.

Public defenders.—The public defender's office was required to award state representative professional services contracts unless bids made for competitive bids in a timely manner. In accordance with this act, 1987 Op. Att'y Gen. No. 87-47.
13-1-112. Competitive sealed proposals; request for proposals.

A. Competitive sealed proposals, including competitive sealed qualifications-based proposals, shall be solicited through a request for proposals that shall be issued and shall include:

1. The specifications for the services or items of tangible, personal property to be procured;
2. All contractual terms and conditions applicable to the procurement; and
3. The form for disclosure of campaign contributions given by prospective contractors to applicable public officials pursuant to Section 13-1-111 NMSSA 1978.

B. The location where proposals are to be received and the date, time and place where proposals are to be received and reviewed; and

C. The requirements for complying with any applicable in-state preference provisions as provided by law.

13-1-112. Competitive sealed proposals; public notice.

Public notice of the request for proposals shall be given in the same manner as provided in Section 77-13-1-106 NMSSA 1978 of the Procurement Code.

13-1-114. Competitive sealed proposals; evaluation factors.

The request for proposals shall state the relative weight to be given to the factors in evaluating proposals.

13-1-115. Competitive sealed proposals; negotiations.

Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submission of proposals and prior to award for the purpose of eliminating inequities and omissions. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. This section shall not apply to architects, engineers, landscape architects and surveys who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSSA 1978.
13-1-116. Competitive sealed proposals; disclosure; record.

The contents of any proposal shall not be disclosed as to be available to competing offerers during the negotiation process.

History: Laws 1984, ch. 65, § 90.

13-1-117. Competitive sealed proposals; award.

The award shall be made to the responsible offer or offers whose proposal is most advantageous in the state agency or a local public body, taking into consideration the evaluation factors set forth in the request for proposals.


ANNOTATIONS


13-1-117.1. Procurement of professional services; local public bodies; legislative branch; selection and award.

A. Each agency within the legislative branch of government operating under the provisions of the Procurement Code (Sections 13-1-28 through 13-1-139 NMRA 1978) and each local public body shall adopt regulations regarding its selection and award of professional services contracts.

B. The award shall be made to the responsible offer or offers whose proposal is most advantageous to the local public body or legislative agency respectively, taking into consideration the evaluation factors set forth in the request for proposals.


13-1-117.2. Procurement of professional services; local public bodies; professional technical advisory assistance.

A. Any local public body which does not have as staff a licensed professional engineer, surveyor, architect or landscape architect shall have appointed to it or have the appointment waived by the appropriate New Mexico professional society listed in Section 3.4.4 of this subpart, an individual to serve as a professional technical advisor. The professional technical advisor shall be a senior member of an architectural, engineering, surveying or landscape architectural business with experience appropriate to the type of local public works project proposed and shall be a resident licensed architect, professional engineer, surveyor or landscape architect in the state who possesses at least ten years of experience in responsible charge as defined in the Architectural Act (Chapter 61, Article 14 NMRA 1978), the Engineering and Surveying Practice Act (Chapter 61, Article 13 NMRA 1978) or the Landscape Architect Act (Chapter 61, Article 12 NMRA 1978), respectively.

B. The professional technical advisor to a local public body shall serve as an agent of the local public body and shall be indemnified and held harmless. He may be reimbursed as provided in the Per Diem and Mileage Act (§10-5-1 through 10-8-8 NMFA 1978) for per diem and mileage in connection with his service as a professional technical advisor and shall receive no other compensation, perquisite or allowance.

C. The duties and responsibilities of the professional technical advisor shall include but may not be limited to the following activities:

(1) advise the local public body in the development of requests for proposals for engineering, surveying, architectural or landscape architectural services procured by the local public body;

(2) advise the local public body in the preparation of requests for proposals;

(3) advise in the evaluation and selection of professional businesses to perform services for the local public body based upon demonstrated competence and qualification for the type of professional services required; and

(4) assist in contract negotiations.
13-1-117.3 Contracts for the design and installation of measures for the conservation of natural resources.

A state agency or a local public body may solicit competitive sealed proposals for a contract that provides for both the design and installation of measures for the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act (Chapter 6 Article 23 NMSA 1978).

13-1-118. Competitive sealed proposals; professional services contracts; contract review.

All contracts for professional services with state agencies shall be reviewed as to form, legal sufficiency and ethical requirements by the general services department or the department of finance and administration or by the attorney general and subject to review by the legislative joint committee on state government, the judicial branch of state government or the boards of trustees of state educational institutions in accordance with Section 11 of the constitution of New Mexico.

Provision also applies to contracts entered into by the legislative branch of state government, the judicial branch of state government or the boards of trustees of state educational institutions in accordance with Section 11 of the constitution of New Mexico.

13-1-119. Competitive sealed qualifications-based proposals; architects; engineers; landscape architects; surveyors; additional requirements.

In addition to compliance with the requirements of Sections 13-1-112 through 13-1-116 and 13-1-116 through 13-1-118 NMSA 1978, a state agency or local public body, when promulgating the engineered design, landscape architects, engineers or surveyors for state public works projects or local public works projects, shall comply with Sections 13-1-129 through 13-1-131 NMSA 1978.

13-1-119.1. Public works project delivery system; design and build projects authorized.

A. Except for road and highway construction or reconstruction projects, a design and build project delivery system may be authorized when the state purchasing agent or a central purchasing office makes a determination in writing that it is appropriate and in the best interest of the state or local public body to use the system on a specific project with a maximum allowable construction cost of more than ten million dollars ($10,000,000). The determination shall be issued only after the state purchasing or central purchasing office has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design and build process:

1. the extent to which the project requirements have been or can be adequately defined;
2. time constraints for delivery of the project;
3. the capability and experience of potential firms with the design and build process;
4. the marketability of the project for use of the design and build process as concern time, schedule, costs and quality; and
5. the capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.

B. When a determination has been made by the state purchasing agent or a central purchasing office that it is appropriate to use a design and build project delivery system, the design and build team shall include, as needed, a New Mexico registered engineer or architect and a contractor property licensed in New Mexico for the type of work required.

C. Except as provided in Subsections F and G of this section, for each proposed state or local public works design and build project, a two-phase procedure for awarding design and build contracts shall be adopted and shall include at a minimum the following:

1. during phase one, and prior to solicitation, documents shall be prepared for a request for qualifications by a registered engineer or architect, either in house or selected in accordance with Sections 13-1-120 through 13-1-124 NMSA 1978, and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, the composition of the selection committee and a description of the phase-two requirements and subsequent management needed to bring the project to completion. Design and build qualifications of responding firms shall be evaluated and a maximum of five firms shall be short-listed in accordance with technical and qualifications-based criteria, and
2. during phase two, the short-listed firms shall be invited to submit detailed specific technical proposals and quotations, costs and scheduling. Unsuccessful firms may be paid a stipend to cover proposal expenses. After evaluation of these submissions, selection shall be made and the contract awarded to the highest ranked firm.

D. Except as provided in Subsections F and G of this section, to ensure clear, uniform, clear and effective processes that will strive for the delivery of a quality project on time and within budget, the secretary, in cooperation with the appropriate and affected professional associations and contractors, shall promulgate rules applicable to all state agencies, which shall be followed by all using agencies when procuring a design and build project delivery system.

E. Any agency shall make the decision on a design and build project delivery system for a state public works project, and a local public body shall make that decision for a local public works project. A state agency shall not make the decision on a design and build project delivery system for a local public works project.

F. The requirements of Subsections C and D of this section and the minimum construction cost requirement of Subsection A of this section do not apply to a design and build project delivery system and the services procured for the project if:

1. the maximum allowable construction cost of the project is four hundred thousand dollars ($400,000) or less, and
2. the only requirement, for architects, engineers, landscape architects or surveyors is limited to either site improvements or adaption for a pre-engineered building or system.

G. The procurement of a design and build project delivery system qualifying for exemptions pursuant to Subsection F of this section, including the services of any architect, engineer, landscape architect, construction manager or surveyor needed for the project, shall be accomplished by competitive sealed bids pursuant to Sections 12-26-102 through 12-26-110 NMSA 1978.
13-1-119.2. Design and build procurement for certain transportation projects.

Notwithstanding any prohibition in an end and highway construction or reconstruction project in Section 13-1-119.1NMSA 1978, the department of transportation may use a design and build project delivery system pursuant to Section 13-1-119.1 NMSA 1978 for projects with a maximum allowable construction cost of more than fifty million dollars ($50,000,000) funded in whole or in part by the gross proceeds of the federal American Recovery and Reinvestment Act of 2009.

12-1-120. Competitive sealed qualifications-based proposals; architects; engineers; landscape architects; surveyors; selection process.

A. For each proposed state public works project, local public works project or construction management contract, the architect, engineering, landscape architect, construction management and surveying selection committees, state highway and transportation department selection committee or local selection committee, as appropriate, shall compile statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and shall conduct interviews with and may require public presentation by all businesses applying for selections regarding their qualifications, their approach to the project and their ability to furnish the required services.

B. The appropriate selection committee shall select, rank or evaluate those qualifications, no less than three businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria together with any criteria, exception, established by the using agency authorizing the project:

1. Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required;
2. Past record of performance as evidenced by government agencies or private industry with respect to such factors as cost, quality of work and ability to meet schedules;
3. Experience or familiarity with the area in which the project is located;
4. The amount of design work that will be performed by a New Mexico business within this state;
5. The volume of work previously done for the entity requesting proposals which is not currently five percent complete with respect to its professional design services, with the objective of affecting an equitable distribution of contracts among qualified businesses and of ensuring that the interest of the public is having available a substantial number of qualified businesses to protect, provided, however, that the principle of selection of the most highly qualified business is not violated; and
6. Notwithstanding any other provision of this subsection, prior may be considered in connection with construction management contracts, unless the services are those of an architect, engineer, landscape architect or surveyor.

C. Notwithstanding the requirement of Section A and B of this section, if fewer than three businesses have submitted a statement of qualifications for a particular project, the appropriate committee may:

1. Rank in order of qualifications and submit to the secretary or local governing authority of the public body for award those businesses which have submitted a statement of qualifications; or
2. Recommend termination of the selection process pursuant to Section 13-1-118. NMSA 1978 and nulling out of any portion of the recitation of the proposed procurement pursuant to Section 13-1-119.1 NMSA 1978 and

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13-1-121. Competitive sealed qualifications-based proposals; architects; engineers; landscape architects; surveyors; selection committees; state public works projects.

A. The "architect, engineer, landscape architect and surveyor selection committee" is created. The committee, which shall serve as the selection committee for state public works projects, except for highway projects of the state highway and transportation department, is composed of four members as follows:

1. A member of the agency for which the project is being designed;
2. The director of the property control division of the general services department who shall be chairperson;
3. A member designated by the architect-engineer-landscape architect joint practice committee; and
4. A member designated by the secretary.

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

C. The members of the architect, engineer, landscape architect and surveyor selection committee shall be reimbursed by the property control division for per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 through 10-8-5 NMSA 1978].

D. The state highway and transportation department shall create a selection committee by rule, after notice and hearing, which shall serve as the selection committee for highway projects of the department.

13-1-122. Competitive sealed qualifications-based proposals; award of architect, engineering, landscape architect and surveying contracts.

The secretary or his designee, or the secretary of the highway and transportation department or his designee or a designee of a local public body shall negotiate a contract with the highest qualified business for the architectural, landscape architectural, engineering or surveying services to be rendered and the scope, complexity and professional nature of the services. Should the secretary or his designee or the designee of a local public body be unable to negotiate a satisfactory contract with the
businesses considered to be the most qualified at a price determined to be fair and reasonable, negoti-ations with that business, shall be formally terminated. The secretary or designee to the designation of a local public body shall then undertake negotiations with the second most qualified business. Failing agree with the second most qualified business, the secretary or his designee as a designee of a local public body shall formally terminate negotiations with that business. The secretary or his designee or the designee of the local public body shall then undertake negotiations with the third most qualified business. Should the secretary or his designee or a designee of a local public body be unable to negotiate a contract with any of the businesses referred by the commission, additional businesses shall be invited in order of their qualifications and the secretary or his designee or the designee of a local public body shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated. The secretary or the representative of a local public body shall publicly announce the business selected for award.


The 1989 amendments, effective June 30, 1989, inserted "the secretary of the highway and transportation department or his designate" and substituted "or surveying corporations" for "and surveying firms" in the first sentence.

13-1-123. Architectural, engineering, landscape architectural and surveying contracts.

A. All contracts between a state agency and an architect for the construction of new buildings or the remodeling or renovation of existing buildings shall contain the provision that all designs, drawings, specifications, notes and other work developed in the performance of the contract are the sole property of the state.

B. All documents, including drawings and specifications, prepared by the architect, engineer, landscape architect or surveyor are investments of professional service. If the plans and specifications developed in the performance of the contract shall become the property of the contracting agency upon completion of the work, the contracting agency agrees to hold harmless, indemnify and defend the architect, engineer, landscape architect or surveyor against all damages, claims and losses, including defendants arising out of any state of the plans and specifications without the written authorization of the architect, engineer, landscape architect or surveyor.

C. A copy of all designs, drawings and other materials which are the property of the state shall be transmitted to the contracting agency. The contracting agency shall order these materials, and a copy of the order shall be provided to the records office.

History: Laws 1985, ch. 68, § 56; 1969, ch. 68, § 16.


The secretary shall adopt by regulation an architectural rate schedule which shall be the highest permissible rates for each building-type group, which shall be defined in the regulations. The rate schedule shall be in effect upon the approval of the state board of finance and compliance with the State Rules Act (Chapter 14, Article 4 NMSA 1978) and shall apply to all contracts between a state agency and an architect which are executed after the effective date of the architectural rate schedule.

History: Laws 1969, ch. 64, § 97.


Sections 13-1-124.1 through 13-1-124.5 NMSA 1978 may be cited as the "Educational Facility Construction Manager Act".

History: Laws 1997, ch. 142, § 3.

Emergency clause. — Laws 2007, ch. 141, § 1 is continued as an emergency clause and was approved on April 5, 2007.

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13-1-124.2. Applicability.

The provisions of the Educational Facility Construction Manager at Risk Act (13-1-124.1 through 13-1-124.5 NMSA 1978) apply to contracts for the construction of educational facilities if the governing body chooses, pursuant to the provisions of that act, to use the services of a construction manager at risk.


13-1-124.3. Definitions.

As used in the Educational Facility Construction Manager at Risk Act (13-1-124.1 through 13-1-124.5 NMSA 1978):

A. "construction manager at risk" means a person who, pursuant to a contract with a governing body, provides the preconstruction services and construction management required in a construction manager at risk delivery method;

B. "construction manager at risk delivery method" means a construction method for an educational facility wherein a construction manager at risk provides a range of preconstruction services and construction management, including cost estimation and consultation regarding the design of the building project, preparation and coordination of bid packages, scheduling, cost control, value engineering and, while acting as the general contractor during construction, detailing the trade contractors scope of work, bidding the trade contracts and other subcontracts, prequalifying and evaluating trade contractors and subcontractors and providing management and construction services, all at a guaranteed maximum price for which the construction manager at risk is financially responsible;

C. "educational facility" means a public school, including a locally chartered or state-chartered charter school or a facility of a state educational institution listed in Section 6-17-1.1 NMSA 1978;

D. "governing body" means:

1. (1) the public school facilities authority if the authority is the using agency that requires the construction of an educational facility;

2. (2) a local school board if the board is the using agency that requires the construction of an educational facility;

3. (3) the governing body of a charter school if the governing body is the using agency that requires the construction of an educational facility; or

4. (4) the governing body of a state educational institution if the governing body is the using agency that requires the construction of an educational facility;

E. "guaranteed maximum price" means the maximum amount to be paid by the governing body for the construction of the educational facility, including all costs of the work, the general conditions and the fees charged by the construction manager at risk.


A. A construction manager at risk delivery method may be used when a governing body determines that it is in its interest to use that method on a specific educational facility construction project, provided that the construction manager at risk shall be selected pursuant to the provisions of this section.

B. The governing body shall form a selection committee of at least three members with at least one member being an architect or engineer. The selection committee shall develop an evaluation process, including a multiphase procedure consisting of one or three steps. A two-step procedure may be used when the total amount of money available for the project is less than five hundred thousand dollars ($500,000) and shall include a request for qualifications and an interview. A three-step procedure shall consist of a request for qualifications, a request for proposals and an interview.

C. A request for qualifications shall be published in accordance with Section 13-1-104 NMSA 1978 and shall include at a minimum the following:

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(1) a statement of the maximum qualifications for the construction manager at risk, including the requirements for:
   (a) a construction license for the type of work to be performed, issued pursuant to the Construction Industries Licensing Act (Chapter 69, Article 10, NMSA 1978); and
   (b) registration pursuant to Section 3-4-13-1 NMSA 1978; and
   (c) a minimum bond capacity;
(2) a statement of the scope of work to be performed, including:
   (a) the location of the project and the total amount of work available for the project;
   (b) a proposed schedule, including a deadline for submission of the statement of qualifications;
   (c) specific project requirements and deliverables;
   (d) the composition of the selection committee;
   (e) a description of the process the selection committee shall use to evaluate qualifications;
   (f) a proposed contract, and
   (g) a detailed statement of the relationships and obligations of all parties including the construction manager at risk, agents of the governing body, such as an architect or engineer, and the governing body;
   (h) a verification of the maximum allowable construction cost, and
(4) a request for a proposal dated as required by Section 13-1-106 NMSA 1978.

The selection committee shall evaluate the requirements submitted and determine the offers that qualify for the construction manager at risk. If the selection committee has chosen a three-step procedure, the selection committee shall issue a request for proposals to the offers that qualify.

If the selection committee has chosen a two-step procedure, the committee shall rank the persons that qualify based upon the statements of qualifications and interview up to three of the highest-ranked offers.

In a three-step procedure, the selection committee shall issue a request for proposals and evaluate the proposal pursuant to Sections 13-1-111 through 13-1-117 NMSA 1978 except that:

(1) the request for proposals shall be sent only to those determined to be qualified pursuant to Subsection D of this section;
(2) the selection committee shall evaluate the proposals and conduct interviews with up to three of the highest-ranked offers; and
(3) the highest-ranked offers shall be reasonably likely to be selected; and
(4) pursuant to Subsection G of this section, the contract award may be made after the interviews.

If conducting interviews with the highest-ranked offers and after considering the factors listed in (3) of this section, the selection committee shall recommend to the governing body the offer that will be the most advantageous to the governing body. Should the governing body or its designee be unable to negotiate a satisfactory contract with the offeror considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that offeror shall be formally terminated. The governing body or designee shall then undertake negotiations with the second most qualified offeror. Failing to reach an agreement with the second most qualified offeror, the governing body or designee shall formally terminate negotiations with the offeror. The governing body or designee shall then undertake negotiations with the third most qualified offeror. Should the governing body or designee be unable to negotiate a contract with any of the offerors selected by the committee, additional offers shall be ranked in order of their qualifications and the governing body or designee shall continue negotiations in accordance with this section until a contract is signed with a qualified offeror or the procurement process is terminated and a new request for proposals is initiated.

In evaluating ranking statements of qualifications, proposals and results of interviews, and in the final recommendation of a construction manager at risk, the selection committee shall consider:

(1) the offeror’s experience with construction of similar types of projects;
(2) the qualifications and experience of the offeror’s personnel and consultants and the role of each in the project;
(3) the plan for management actions to be undertaken on the project, including services to be rendered in connection with safety and the safety plan for the project;
(4) the offeror’s experience with the construction manager at risk method; and
(5) all other selection criteria, as stated in the request for qualifications and the request for proposals.

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13-1-124.5 PUBLIC PURCHASES AND PROPERTY 23-1-125

I. Nothing in this section precludes the selection committee from recommending the termination of the selection procedure pursuant to Section 13-1-123 NMRA, 1978 and repeating the selection process pursuant to this section. Any material received by the selection committee in response to a solicitation that is submitted shall not be disclosed so as to be available to competing offers.

J. After a contract is awarded, the selection committee shall make the names of all offerors and the names of all officers selected for interview available for public inspection along with the selection committee's final ranking and evaluation scores. Officers who were interviewed but not selected for contract award shall be notified in writing within fifteen days of the award.


Emergency clause. — Laws 2007, ch. 141, § 10 contained an emergency clause and was approved April 2, 2007.

13-1-125.5 Responsibilities of construction manager at risk following award of project.

A. The contract with the construction manager at risk shall specify:
   (1) the guaranteed maximum price; and
   (2) the percentage of the guaranteed price that the construction manager at risk will perform with its own work force.

B. The construction manager at risk, in cooperation with the governing body, shall seek to develop subcontractor interest in the project and shall furnish to the governing body and any architect or engineer representing the governing body a list of subcontractors who state in writing that they are responsible bidders or responsible offerors, including suppliers who are to furnish materials or equipment furnished to a special design and from whose proposals or bids will be requested for each principal portion of the project. The governing body and its architect or engineer shall promptly reply in writing to the construction manager at risk if the governing body, architect or engineer knows of any objection to a listed subcontractor or supplier, provided that the receipt of the list shall not require the governing body, architect or engineer to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the governing body, architect or engineer later to object to or reject any proposed subcontractor or supplier.

C. The construction manager at risk shall:
   (1) conduct pre-bid or pre-proposal meetings;
   (2) advise the governing body about bidders or proposers;
   (3) enter into contracts; and
   (4) assist the governing body in evaluating submissions by responsible bidders and offerors.


Emergency clause. — Laws 2007, ch. 141, § 10 contained an emergency clause and was approved April 2, 2007.

13-1-125. Small purchases.

A. A central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars ($20,000) in accordance with the applicable small purchase regulations adopted by the secretary, a local public body or a central purchasing office that has the authority to issue regulations.

B. Notwithstanding the requirements of Subsection A of this section, a central purchasing office may procure professional services having a value not exceeding fifty thousand dollars ($50,000), including applicable state and local gross receipts taxes, except for the services of landscape architects or surveyors for state public works projects or local public works projects, in accordance with professional services procurement regulations promulgated by the department of finance and administration, the general services department or a central purchasing office with the authority to issue regulations.

C. Notwithstanding the requirements of Subsection A of this section, a state agency or a local public body may procure services, construction or items of tangible personal property having a value not exceeding one hundred thousand dollars ($100,000) by issuing a direct purchase order to a contractor based upon the best obtainable price.

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

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Cross references—See adoption of rules and regulations by director of department of finance and administration, see 16-5-5 NMSA 1978.

For adoption of rules and regulations by secretary of general services department, see 9-12-5 NMSA 1978.

The 2007 amendment, effective July 1, 2007, increased the amount of minimum professional services from $20,000 to $60,000 and tangible personal property from $5,000 to $25,000.

The 2000 amendment, effective July 1, 2000, increased the maximum value of professional services from $1,000 to $25,000 and increased the maximum value of tangible personal property from $250 to $5,000.

The 1997 amendment, effective July 1, 1997, increased the minimum value of professional services from $20,000 to $30,000 in Subsection B, increased the maximum value of professional services from $50,000 to $100,000 in Subsection E, and increased the maximum value of purchase of best obtainable processes from $1,500 to $6,000 in Subsection C.

The 1997 amendment, effective July 1, 2001, deleted "the state purchasing agent" from the beginning of the first sentence of Subsection A, and substituted "two thousand five hundred dollars" for "five hundred dollars" in Subsection C.

The 1997 amendment, effective July 1, 1997, substituted "two thousand dollars" for "two thousand five hundred dollars" in Subsection A, deleted former Subsection C relating to local and educational institutions purchasing, and redesignated former Subsections D and E as Subsections C and D.

The 1996 amendment, effective June 30, 1995, made a minor stylistic change in Subsection A that inserted "the state's two-year post-secondary institution or for a school district as defined in the Public School Usages Act" in Subsection C.

13-1-126. Sole source procurements.

A contract may be awarded without competitive sealed bids or competitive sealed proposals regardless of the estimated cost when the state purchasing agent or a central purchasing office makes a determination, after evaluating a good-faith review of available sources and consulting the using agency, that there is only one source for the required service, construction or item of tangible personal property.

The state purchasing agent or a central purchasing office shall conduct negotiations, as appropriate, as to price, delivery and quantity in order to obtain the price most advantageous to the state agency or a local public body. A request for the purchase of research consultant services by invitation of higher learning institutions is a sole source procurement.


A. The state purchasing agent, a central purchasing office or a designee of either may make or authorize others to make emergency procurements whenever there exists a threat to public health, welfare or safety, or where irregular procurement procedures under emergency conditions provided that emergency procurements shall be made with competition as is practicable under the circumstances. A written determination of the basis for the emergency procurement and the selection of the particular contract or vendor shall be included in the procurement file. Emergency procurements shall not include the purchase or lease purchase of heavy road equipment.

B. An emergency condition is a situation which creates a threat to public health, welfare or safety that may arise by reason of floods, fires, epidemics, acts of terrorism, equipment failures or similar events and includes the planning and preparing for an emergency response. The existence of the emergency condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:

1. The functioning of government;
2. The preservation, or protection of property; or
3. The health or safety of any person.

Money expended for planning and preparing for an emergency response shall be authorized for and reported to the legislative finance committee and the department of finance and administration within sixty days after the end of each fiscal year.

13-1-128. Sole source procurements.

The 2007 amendment, effective March 8, 2007, inserted "state," "acts of terrorism," and "and includes the planning and preparing for an emergency response" in the first sentence of Subsection A, and added Subsection C.

ANOTATIONS
Applicability to exempt transactions. — The emergency provisions of Section 13-1-127 NMSA 1978 did not apply to a contract for the purchase of water services by a school district from a rural water utility in a municipality which was within the exemptions established in Subsections A. and D of Section 13-1-103 NMSA 1978. Morningstar Water Users' Agency v Farm-
13-1-128. Sole source and emergency procurements; content and submission or record.

All central purchasing officials shall maintain, for a minimum of three years, records of sole source and emergency procurements. The record of each such procurement shall be public record and shall contain:

A. The contractor's name and address;
B. The amount and term of the contract;
C. A listing of the services, construction or items of tangible personal property procured under the contract; and
D. The justification for the procurement method.

History: Laws 1984, ch. 65, § 10; 1987, ch. 548, § 11.

Annotations

Intent. — The intention of the emergency procurement statute is to keep a public record of such procurements and to provide some means of control over them. 1969 Op. Att'y Gen. No. 69-197.

Reason for exceptions. — Only when uncontrolled contract may be harmful or unproductive of savings were exceptions from the bid requirement allowed by the former Public Purchases Act. 1969 Op. Att'y Gen. No. 69-197.


13-1-129. Procurement under existing contracts.

A. Notwithstanding the requirements of Section 13-1-109 through 13-1-115 NMSA 1978, the state purchasing agent or a central purchasing official may contract for services, construction or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals as follows:

(1) At a price equal to or less than the contractor's current federal supply contract price (GSA), providing the contractor has indicated in writing a willingness to extend such contractor pricing, terms and conditions to the state agency or local public body and the purchase order adequately identifies the contract relied upon;

(2) With a business which has a current exclusive or nonexclusive price agreement with the state purchasing agent or a central purchasing office for the item, services or construction meeting the same standards and specifications as the items to be procured if the following conditions are met:

(a) The quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and

(b) The purchase order adequately identifies the price agreement relied upon;

B. The central purchasing office shall retain for public inspection and for the use of auditors a copy of each federal supply contractor state purchasing agent price agreement relied upon to make purchases without seeking competitive bids or proposals.


The 1991 amendment, effective June 14, 1991, in Subsection A, substituted "contracts" for "contracts" in the introductory paragraph, amended Paragraph (A) by which read "at a price equal to or less than the federal supply contract price or catalog price, whichever is lower" and the purchase order adequately identifies the contract relied upon", substituted "exclusive or nonexclusive" for "contract" in the introductory paragraph in Paragraph (B) and substituted "price agreement" for "contracts" in Subparagraph (A) and (B) of Paragraph (B), inserted "federal supply contractor", deleted "contract or current" from Paragraph (A), added the preceding sentence at the end of Subsection B, and deleted the former second and third sentences in Subsection B relating to obtaining copies of price agreements or contracts and the fees therefor.

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13-1-136. Purchases; antipoverty program business. 

A. Without regard to the bid requirements of Section 76, 13-1-102 NMSA 1978 of the Procurement Code, a central purchasing office may negotiate a contract for materials, goods, processes, or manufactured in this state by small businesses, cooperatives, community self-determination corporations or other such enterprises designed and operated to alleviate poverty conditions and aided by state or federal antipoverty programs or through private philanthropy.

B. Prior to negotiating a contract under this section, a central purchasing office shall make a determination of the reasonableness of the price and the quality of the materials and shall that the public interest will best be served by the procurement.

History: Laws 1984, ch. 54, § 123.

13-1-131. Rejection or cancellation of bids or requests for proposals; negotiations.

An invitation for bids, a request for proposals or any other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part when it is to the best interest of the state agency or a local political body. A determination stating the reasons for cancellation shall be made part of the procurement file. If no bids are received or if all bids received are rejected and if the invitation for bid was for any tangible personal property, construction or service, then new invitations for bids shall be requested. If upon rebidding the tangible personal property, construction or services, the bids received are unacceptable, or if no bids are received, the central purchasing office may purchase the tangible personal property, construction or services at the open market at the best obtainable price.

History: Laws 1984, ch. 61, § 104; 1989, ch. 344, § 12.

Annotations

Evaluation of proposals. — All the rules in question here - including a healthy requirement after the bids were opened, awarding the contract to the lowest responsible bidder, and rejecting the proposals after making a contract award - were arbitrary and capricious. Idaho's bid awarding rules, as applied, were not the same as those under long used state law. In re Bricen, Inc., 118 Pac. 2d 797 (Idaho 1951). Am. Jur. 2d, A.L.R. and C.J.S. references. — Public authority: Extent of state or its subdivisions to reject all bids, 52A Am. Jur. 2d 106.

13-1-132. Irregularities in bids or proposals.

The state purchasing agent or a central purchasing office may revoke technical irregularity in the form of the bid or proposal of the low bidder or offeror which do not alter the price, quality or quantity of the services, construction or items of tangible personal property bid or offered.

History: Laws 1984, ch. 65, § 115.

13-1-133. Responsibility of bidders and offerors.

If a bidder or offeror who otherwise would have been awarded a contract is found not to be a responsible bidder or offeror, setting forth the basis of the finding shall be prepared by the state purchasing agent or central purchasing office. The unresponsibility of a bidder or offeror to properly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the bidder or offeror is not a responsible bidder or offeror.

History: Laws 1984, ch. 65, § 106.

13-1-134. Prequalification of bidders.

A business may be prequalified by a central purchasing office as a bidder or offeror for particular types of services, construction or items of tangible personal property. Mailing lists of potential bidders or offerors shall include but shall not be limited to such prequalified businesses.

History: Laws 1984, ch. 65, § 107.
13-1-135. Cooperative procurement authorized.

A. Any state agency or local public body may either participate in, sponsor or administer a cooperative procurement agreement for the procurement of any services, construction or items of tangible personal property with any other state agency, local public body or external procurement unit in accordance with an agreement entered into and approved by the governing authority of each of the state agencies, local public bodies or external procurement units involved. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which the purpose will be accomplished. Any power exercised under a cooperative procurement agreement entered into pursuant to this subsection shall be limited to the central purchasing authority common to the contracting parties, even though one or more of the contracting parties may be located outside this state. An approved and signed copy of all cooperative procurement agreements entered into pursuant to this subsection shall be filed with the state purchasing agent. A cooperative procurement agreement entered into pursuant to this subsection is limited to the procurement of items of tangible personal property, services or construction.

B. Notwithstanding the provisions of Subsection A of this section, a cooperative procurement agreement providing for mutually hold funds or for other terms and conditions involving public funds or property included in Section 11-1-1 through 11-1-7 NMSA 1978 shall be entered into pursuant to the provisions of the Joint Powers Agreements Act (11-1-1 through 11-1-7 NMSA 1978).

C. Central purchasing offices other than the state purchasing agent may cooperate by agreement with the state purchasing agent in obtaining contracts or price agreements, and such contract or agreed prices shall apply to purchase orders subsequently issued under the agreement.

13-1-135.1. Recycled content goods; cooperative procurement.

A. Beginning July 1, 1996, each central purchasing office shall, whenever its price, quality, quantity, availability and delivery requirements are met, purchase recycled content goods through contracts established by the purchasing division of the general services department or with other central purchasing offices.

B. For purposes of this section, "recycled content goods means supplies and materials composed in whole or in part of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.


13-1-136. Cooperative procurement; reports required.

The general services department and the department of finance and administration shall notify the state purchasing agent on or before January 1 of each year of the cooperative procurement agreements entered into by state agencies with local public bodies or external procurement units during the preceding fiscal year.

History: Laws 1985, ch. 65, § 169.

13-1-137. Sale, acquisition or use of property by a state agency or a local public body.

Any state agency or local public body may sell property to, acquire property from or cooperatively use any items of tangible personal property or services belonging to another state agency or a local public body or external procurement unit:

A. In accordance with an agreement entered into with the approval of the state board of finance or the data processing and data communications planning council (Information Technology Commission options council), or

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13-1-128. Cost or pricing data required.

When required by the state purchasing agent or a central purchasing office, a prospective contractor shall submit cost or pricing data when the contract is expected to exceed twenty-five thousand dollars ($25,000) and is to be awarded by a method other than competitive sealed bids.

History: Laws 1986, ch. 65, § 111.

13-1-138.1. Specification of certain components; separate pricing required.

Prior to tabulating a bid or proposal for a state public works project, the state purchasing agent, or a responsible holder or responsible officer determines that there is only one source for a specific service, construction or item of tangible personal property that is required in the specifications, the state purchasing agent, responsible holder or responsible officer may require any bid or offer submitted by a subcontractor or supplier to price separately the specific service, construction or item of tangible personal property.


13-1-138.2. School construction projects; separate pricing required in certain circumstances.

Prior to submitting a bid or proposal for a state or local public works project for the construction of a public school facility, if the central purchasing office or a responsible holder or responsible officer determines that there is only one source for a specific service, construction or item of tangible personal property that is required in the specifications, the central purchasing office, responsible holder or responsible officer may require any bid or offer submitted by a subcontractor or supplier to separately price the specific service, construction or item of tangible personal property.


13-1-139. Cost or pricing data not required.

The cost or pricing data relating to the award of a contract shall not be required when:
A. the procurement is based on competitive sealed bid;
B. the contract price is based on established catalogue prices or market prices;
C. the contract is to be paid by the government;
D. the contract is for professional services; or


Revised 2006, ch. 138, § 3.

The 1983 amendment, effective June 19, 1983, added subsection (b) and made a typographical stylistic change.

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13-1-140. Cost or pricing data; change orders or contract modifications.

When required by the state purchasing agent or a central purchasing office, a contractor shall submit cost or pricing data prior to the execution of any change order or contract modification, whether or not cost or pricing data was required in connection with the initial award of the contract, when the change order or modification involves aggregate increases or aggregate decreases that are expected to exceed twenty-five thousand dollars ($25,000).

History: Laws 1984, ch. 65, § 113.

13-1-141. Cost or pricing data; change orders; contract modifications; exceptions.

The submission of cost or pricing data relating to the execution of a change order or contract modification shall not be required when uncoordinated change orders or contract modifications for which cost or pricing data would not be required are consolidated for administrative convenience.

History: Laws 1984, ch. 66, § 114.

13-1-142. Cost or pricing data; certification required.

A contractor, actual or prospective, required to submit cost or pricing data shall certify that to the best of the knowledge and belief the cost or pricing data submitted was accurate, complete and current as of a specified date.

History: Laws 1984, ch. 66, § 115.

13-1-143. Cost or pricing data; price adjustment provision required.

Any contractor award, change order or contract modification under which the submissions and certifications of cost or pricing data are required shall contain a provision stating that the price to the state agency or a local public body, including profit and fee, shall be adjusted to exclude any significant expenses by which the state agency or a local public body reasonably finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete or not current as of the date specified.


13-1-144. Cost or price analysis.

A cost analysis or price analysis, as appropriate, may be conducted prior to the award of a contract other than one awarded by competitive sealed bidding. A written record of such cost or price analysis shall be made a part of the procurement file.

History: Laws 1984, ch. 65, § 117.

13-1-145. Cost principles; regulations.

The secretary, a local public body or a central purchasing office which has the authority to issue regulations may promulgate regulations setting forth principles to be used to determine the allowability of incurred costs for the purpose of reimbursing costs to a contractor.

History: Laws 1986, ch. 65, § 118.

13-1-146. Requirement for bid security.

Bid security shall be required of bidders or offerors for construction contracts when the price is estimated by the procurement officer to exceed twenty-five thousand dollars ($25,000). Bid security is an amount equal to at least five percent of the amount of the bid shall be a bond provided by a surety.

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13-1-146.1. Directed suretyship prohibited; penalty.

A. Except to the extent necessary to ensure that a surety company meets the requirements of Subsection A of Section 13-1-148 NMSA 1978, an employee of the state or its political subdivision, or a person acting or purporting to act behalf of that employee, shall not require a bidder or an offerer in a procurement for a construction contract pursuant to the Procurement Code (Sections 13-1-28 through 13-1-100 NMSA 1978) to make application or furnish financial data for a surety bond from a particular surety company, insurance company, broker or agent in connection with the bid or proposal.

B. A person who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced according to the provisions of Section 31-18-1 NMSA 1978.


Cross references — For construction contract performance and payment bonds, see 13-1-38 NMSA 1978.

13-1-147. Bid security; rejection of bids.

A. When the solicitation for bids requires bid security, noncompliance by the bidder requires that the bid be rejected.

B. If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.


13-1-148. Bid and performance bonds; additional requirements.

A. Bid and performance bonds or other security may be required for contracts for issuance of tangible personal property or services as the state purchasing agent or a local public body does not necessary to protect the interests of the state agency or local public body. Such bonding requirements should not be used as a substitute for a determination of the reliability of a potential offerer.

B. As to performance and payment bonds for construction contracts, see the requirements of Section 13-4-4 NMSA 1978.


A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is one hundred twenty-five thousand dollars ($125,000) or more.


Cross references — For the definition of a public works project, see 13-1-1 NMSA 1978.

For the definition of a local public works project, see 13-1-141 NMSA 1978.

The 2007 amendment, effective July 1, 2007, increased the minimum contract amount from $100,000 to $125,000.

Applications — Section 13-1-146.1 NMSA 1978 applies only to a subcontractor that contracts directly with the primary contractor and not to subcontractors that were executed after the effective date of Section 13-1-146.1 NMSA 1978. 2004 Op. Att'y Gen. No. 04-11-17.

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13-1-149. Types of contracts.

Subject to the limitations of Section 123 through 127 (13-1-110 through 13-1-115 NMSA 1978) of the Procurement Code, any type of contract, including but not limited to definitive quantity contracts and price agreements, which will promote the best interests of the state agency or a local public body may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited except for the purchase of insurance. A true reimbursement contract may be used when such contract is likely to be less costly or it is impracticable to otherwise obtain the services, construction or items of tangible personal property required.

History: Laws 1984, ch. 43, § 122. Cross references. — For public works contracts, see Chapter 15, Article 4 NMSA 1978.

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Option for exempt agencies or public bodies. — When the state purchasing agent has entered into a contract which permits, but does not require, those state agencies or local public bodies not under the supervision of the agent to purchase under the contract, the purchases may be made by submission to bids, purchasing under the state purchasing agent's contract or purchasing from any other vendor, provided the price obtained, etc., is equal to or better than the terms of the contract. 1968 Op. Att'y Gen. No. 665.

When manner of delivery or charging immaterial. — Remember is the responsibility of the state purchasing agent to reduce, to the maximum extent possible, the number of purchase transactions by combining into bulk orders and contracts the requirements of all state agencies for common-use items or items repetitively purchased, its fact that it may be delivered in small quantities and charged as delivered through the use of credit cards seems immaterial. 1969 Op. Att'y Gen. No. 666.

13-1-150. Multi-term contracts; specified period.

A. A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars ($25,000), may be entered into for any period of time deemed to be in the best interests of the state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is twenty-five thousand dollars ($25,000) or more, the term shall not exceed eight years, including all extensions and renewals, except that for a contract entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act (Chapter 6, Article 21, NMSA 1978), the term shall not exceed twenty-five years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof.

B. A contract for professional services may not exceed four years, including all extensions and renewals, except for the following:
1. Services required to support or operate federally certified remedial, financial assistance and child support enforcement management information or payment systems;
2. Services to design, develop or implement the taxation and revenue information management system project authorized by Laws 1997, Chapter 127;
3. A multi-term contract for the services of trustees, escrow agents, registrars, paying agents, underwriters, and financial advisers with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding;
4. Services relating to the implementation, operation and administration of the Edenton Trust Act (31-21F-1 through 31-21F-7 NMSA 1978); and
5. Services relating to measurement and verification of conservation-related cost savings and utility cost savings pursuant to the Public Facility Energy Efficiency and Water Conservation Act.


The 2000 amendment, effective July 1, 2000, in Subsection A, in the second sentence, changed "ten" to "twenty-five" and added Paragraph (5) of Subsection B;

The 2001 amendment, effective June 15, 2001, added the subsection and paragraph designations; inserted the provision that a contract for professional service may not exceed four years, including all extensions and renewals in Subsection B; deleted "may not exceed a term of four years, including all extensions and renewals" at the end of Paragraph (5); and added Paragraph (6).

The 1998 amendment, effective May 19, 1998, inserted "and Water Conservation" in the second sentence; inserted "thereafter" for "therefore" in the third sentence; and inserted the language beginning with "and except for services to design," in the fourth sentence.

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13-1-151. Multi-term contracts; determination prior to use.

Prior to the signing of a multi-term contract, the state purchasing agent or the central purchasing office involved shall make a determination that:

A. the estimated requirements over the period of the contract are reasonable first and continuing; and
B. the contract will serve the best interests of the state agency or a local public body.

History: Laws 1984, ch. 45, § 134

13-1-152. Multi-term contracts; cancellation due to unavailability of funds.

When funds are not appropriated or otherwise made available to support continuation of performance of a multi-term contract in a subsequent fiscal period, the contract shall be cancelled.

History: Laws 1984, ch. 45, § 125.

13-1-153. Multiple source award; limitations on uses.

A multiple source award may be made pursuant to Section 13-1-110 and 55-3-1007 of the Revised State Code, or the statutory scheme prerequisite to the use of a multi-term contract or a multi-term contract is made in response to a qualifications-based proposal.

History: Laws 1984, ch. 45, § 131.9

The 2007 amendment, effective July 1, 2007, changed the statutory scheme and provided that a multiple source award shall be based on the lowest bid or proposal unless the award is made in response to a qualifications-based proposal.

13-1-154. Multiple source award; determination required.

The state purchasing agent or central purchasing office shall make a determination setting forth the reasons for a multiple source award.

History: Laws 1986, ch. 45, § 137.

13-1-154.1. Multiple source contracts; architectural and design service contracts; indefinite quantity construction contracts.

A. A state agency may procure multiple architectural or engineering design service contracts for multiple projects under a single qualifications-based request for proposals, provided the total amount of contracts and all renewals does not exceed two hundred thousand dollars ($200,000) over four years.

B. A state agency may procure multiple indefinite quantity construction contracts pursuant to a contract agreement for multiple projects under a single request for proposals, provided the total amount of contracts and all renewals does not exceed two million dollars ($2,000,000) over four years and the contract provides at any one purchase order, under the contract, may not exceed five hundred thousand dollars ($500,000).

C. A state agency may procure construction in accordance with the provisions of Subsection A or B of this section if:

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(1) the advertisement and request for proposals states that multiple contracts may or will be awarded, the number of contracts that may or will be awarded and describes the services or construction to be performed under each contract;
(2) there is a single selection process for all of the multiple contracts, except that for each contract there may be a separate final list and a separate acquisition of contract terms;
(3) each of the multiple contracts for professional design services or construction shall have a term not exceeding four years, including all extensions and renewals;
(4) a contract shall not be awarded pursuant to this section to a firm that is currently performing under a contract issued pursuant to this section if the total amount of all contracts issued pursuant to this section to that firm would exceed:
(a) two hundred thousand dollars ($200,000) in any four-year period, for architectural or engineering design services; or
(b) two million dollars ($2,000,000) in any four-year period, for construction services; and
(5) the procurement is subject to the limitations of Sections 13-1-150 through 13-1-154 NMSSA 1978.


13-1-155. Procurement of used items; appraisal required; county road equipment exception for auctions.

A. A central purchasing office, when procuring used items of tangible personal property the estimated cost of which exceeds five thousand dollars ($5,000), shall request bids as though the items were new, adding specifications that permit used items under conditions to be outlined in the bid specifications, including but not limited to requiring a written warranty for at least ninety days after date of delivery and an independent "certificates of working order" by a qualified mechanic or appraiser.
B. Notwithstanding the provisions of Subsection A of this section, the purchasing office for a county may purchase, at public or private auctions conducted by established, recognized commercial auction companies, used heavy equipment, having an estimated cost that exceeds five thousand dollars ($5,000), for use in construction and maintenance of county streets, roads and highways subject to the following conditions:
(1) the commercial auction company shall have been in business for at least three years preceding the date of purchase and shall conduct at least five auctions annually;
(2) the value of each piece of equipment shall be appraised 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 and comparable sales, and stating that the appraiser has carried out his independent judgment without prior understanding or agreement with any person as to the target value or range of value;
(3) 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, including all auction fees and buyer's exchanges, shall not exceed the appraised value.


13-1-156. Trade or exchange of used items; appraisal required.

A. A central purchasing office, when trading in or exchanging used items of tangible personal property the estimated value of which exceeds five thousand dollars ($5,000) as part payment on the procurement of new items of tangible personal property, shall:
(1) have an independent appraisal made of the items to be traded in or exchanged. The appraisal shall be in writing, shall be made part of the procurement file and shall be a public record. The invitation for bids or request for proposals shall contain notice to prospective bidders or offerors of the description and specifications of the items to be traded in or exchanged, the appraised value of
the items to be traded in or exchanged and the location where the items to be traded in or exchanged may be inspected; or
(2) Have two written quotes for purchase of the property at a specified price.
B. Such bid or offer shall be made upon the basis of at least two bids or offers by deducting the appraised value or highest offer of the items to be traded in or exchanged from the highest bid or offer on the new items of tangible personal property to be provided. If an amount offered is lower than the appraised value or the highest offer, it is subject to a fairness reflection of the current market, representative of the condition of the items of tangible personal property and in the best interest of the agency, the bid or offer may be accepted. Documentation of the terms of acceptance shall be in writing and shall be made a part of the procurement file and shall be a public record.

History: Laws 1984, ch. 65, § 2; 1985, ch. 526.

§ 18.

13-1-157. Receipt; inspection; acceptance or rejection of deliveries.

The using agency is responsible for inspecting and accepting or rejecting deliveries. The using agency shall determine whether the quantity is as specified in the purchase order or contract and whether the quality conforms to the specifications referred to or included in the purchase order or contract. If inspection reveals that the delivery does not conform to the quantity or quality specified in the purchase order or contract, the using agency shall immediately notify the central purchasing office. The central purchasing office shall notify the vendor that the delivery has been rejected and shall order the vendor to promptly make a satisfactory replacement or supplementary delivery. In case the vendor fails to comply, the central purchasing office shall have no obligation to pay for the nonconforming items of tangible personal property. If the delivery does conform to the quantity and quality specified in the purchase order or contract, the using agency shall certify to the central purchasing office that delivery has been completed and is satisfactory.


13-1-158. Payments for purchases.

A. No warrant, check or other negotiable instrument shall be issued for payment for any purchase of services, construction or items of tangible personal property unless the central purchasing officer of the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless pre-payment is permitted under Section 13-1-99 NMSA 1978 by exception of the purchase from the Procurement Code (13-1-28 through 13-1-199) NMSA 1978.

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

C. Except as provided in subsection D of this section, upon certification by the central purchasing office or the using agency that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within thirty days of the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirty-first day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due to the contractor at the rate of one and one-half percent per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, payments shall be tendered to the contractor within 45 working days of receipt of funds from that funding agency.

D. If the central purchasing office or the using agency finds that the services, construction or items of tangible personal property are not acceptable, it shall, within thirty days of the date of receipt of written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site, provide to the contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the contractor may proceed to provide remedial action.

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13-1-159. Right to inspect plant.

A contract or a solicitation therefor may include a provision permitting a state agency or a local public body, at reasonable times, to inspect the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded.

History: Laws 1984, ch. 65, § 132.

13-1-160. Audit of cost or pricing data.

A state agency or a local public body may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data, to the extent that such books and records relate to actual or projecting data. Any person who receives a contract to change order or any New Mexico for which cost or pricing data is required shall maintain books and records that relate to such cost or pricing data for three years from the date of final payment under the contract unless a shorter period is otherwise authorized in writing.

History: Laws 1984, ch. 65, § 133.

13-1-161. Contract audit.

A state agency or a local public body shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract, other than a firm-fixed-price contract, to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing.


13-1-162. State procurement standards and specifications committee; terms; staff.

A. There is created a "State Procurement Standards and Specifications Committee." The state purchasing agent is a member and the chairman of the committee.

B. The committee consists of eleven members knowledgeable in procurement procedures appointed by the secretary with the approval of the governor as follows:

1. one representative of the state highway department;
2. one representative of the health and environment department;
3. one representative of the corrections department;

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(4) one person who is an elected county official or a full-time county employee;
(5) one person who is an elected municipal official or a full-time municipal employee;
(6) one person who is an elected district school board member or is a full-time school employee;
(7) two persons representing other state departments; and
(8) two persons representing the private sector.

C. The terms of all committee members are limited to the term of the governor under whom they were appointed, provided, however, that the terms of the county, municipal and district school board members are further conditioned upon their continuing service with the local governing body which qualified them for appointment.

D. The state purchasing agent shall provide the necessary staff for the committee.

History: Laws 1984, ch. 65, § 135.
Compiler's notes.—Laws 1991, ch. 20, § 14 repealed former 8-7-14 NMSA 1978, relating to the health and environment department, referred to in this section, and created a new 8-7-14 NMSA 1978, which created the department of health. Laws 1991, ch. 20, § 14 created the department of environmental. See 8-7A-1 NMSA 1978 et seq.

13-1-163. Committee powers and duties; special committees; annual report.

A. The committee shall prepare standards, specifications and a list of acceptable brand-name items and shall seek the advice and assistance of state agencies and local public bodies to ascertain their common and special requirements.

B. The committee shall develop model specifications for all state agencies and local public bodies.

C. The committee shall assist the state purchasing agent in the preparation of rules and regulations.

D. The committee shall appoint special committees consisting of representatives of state departments, local public bodies and private industry, including technical consultants, for the study of any commodity or commodity group whenever such appointment is necessary or reasonable. The special committee shall automatically dissolve upon the completion of its specific task.

E. The committee and special committees may make use of the laboratories, engineering facilities and technical staff of any state department or agency, including educational institutions, in connection with the performance of their duties.

F. The state purchasing agent shall report annually to the secretary on the work done by the committee and its special committees during the calendar year. The report shall be made available to the legislature by delivering a copy to the legislative finance committee prior to the beginning of each annual legislative session.

G. No standard, specification, acceptable brand list, rule or regulation recommended by the committee shall be construed to alter the authority of any state agency or local public body.

History: Laws 1984, ch. 65, § 136.

13-1-164. Specifications; maximum practicable competition.

All specifications shall be drafted so as to ensure maximum practicable competition and fulfill the requirements of state agencies and local public bodies. In preparing specifications, if, in the opinion of the state purchasing agent or central purchasing office, a proposed component is of a nature that would restrict the number of responsible bidders or responsible suppliers and thereby limit competition, if practicable, the state purchasing agent or central purchasing office shall draft the specifications without the component and provide the component by seeking a separate invitation for bids or request for proposals or by entering into a sole source procurement.


The 2007 amendment, effective June 15, 2007, provided that in preparing specifications, the state purchasing agent or central purchasing office shall not include any specific component that would limit competition.

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13-1-155. Brand-name specification; use.

A brand-name specification may be used only when the state purchasing agent or a central purchasing office makes a determination that only the identified brand-name item or items will satisfy the needs of the state agency or a local public body.

History: Laws 1986, ch. 60, § 128.

13-1-166. Brand-name specification; competition.

The state purchasing agent or a central purchasing office shall seek to identify sources from which the designated brand-name items can be obtained and shall solicit each source to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 99 (13-1-509 NMSA 1978) of the Procurement Code.

History: Laws 1986, ch. 65, § 129.

13-1-167. Brand-name or equal specification; required characteristics.

Unless the state purchasing agent or a central purchasing office makes a determination that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand-name or equal specifications shall include a description of the particular design, function or performance characteristics which are required.

History: Laws 1986, ch. 65, § 140.

13-1-168. Brand-name or equal specification; required language.

Where a brand-name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

History: Laws 1986, ch. 65, § 141.

13-1-169. Purchase request; specifications; purchase orders.

A. All using agency requests for procurement shall contain:

(1) a statement of need and the general characteristics of the item, construction or service desired; and

(2) a statement of the quantity desired and a general statement of quality.

B. The central purchasing office may consolidate procurements and may contract for items of equal personal property or services at a firm price at which the items or services needed during the year or portion of a year shall be purchased.

History: Laws 1984, ch. 65, § 142.


A. A state agency, local public body or central purchasing office with the power to issue regulations may require by regulations that contracts include uniform clauses providing for termination of contracts, adjustments in prices, adjustments in time of performance or other contract provisions as appropriate, including but not limited to the following subjects:

(1) the unilateral right of a state agency or a local public body to order in writing:

(a) changes in the work within the scope of the contract; and

(b) temporary suspension of the work or the delay of performance;

(2) variations occurring between estimated quantities of work in a contract and actual quantities;

(3) liquidated damages;

(4) permissible excuses for delay or nonperformance; and

(5) termination of the contract for default;

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13-1-171  PROCUREMENT

(6) termination of the contract in whole or in part for the convenience of the state agency or a local public body;

(7) assignment clauses for the assignment by the contractor to the state agency or a local public body of causes of action for violation of state or federal antitrust statutes;

(8) identification of subcontractors by bidders and subbidders.

b. A state agency, local public body or central purchasing office with the power to issue regulations shall require by regulation that contracts include a clause imposing state payment charges against the state agency or local public body in the amount and under the conditions stated in Section 13-1-155 NMSA 1978.


Adjustments in price shall be computed in one or more of the following ways as specified in the contract:

A. by agreement on a fixed-price adjustment before commencement of performance or at or soon thereafter as practicable;

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

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

D. by a provision for both upward and downward revision of stated contract price upon the occurrence of specified contingencies as contained in the contract; or (in commercial items sold in substantial quantities to the general public with prices based upon established catalogues or list prices in a form regularly maintained by the manufacturer or vendor and published or otherwise available for customer inspection) in the event of revision of the stated contract price, the contract shall be promptly documented by the state purchasing agent or central purchasing officer;

E. in such other manner as the contracting parties may mutually agree.

F. in the absence of agreement by the parties, by a unilateral determination reasonably computed by the state agency or a local public body of the costs attributable to the events or conditions.

History: Laws 1984, ch. 65, § 144; 1987, ch. 310, § 18.

13-1-172. Right to protest.

Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the state purchasing agent or a central purchasing office. The protest shall be submitted in writing within fifteen calendar days after knowledge of the facts or occurrences giving rise to the protest.


ANNOTATIONS

Appellate review of administrative protest. — A protest of the award of a contract to a single vendor distribution system meeting the requirements of the Procurement Code, as those terms are defined by Section 13-1-172 NMSA 1978, is subject to review by the State Board of Education. In re ex rel. INMCO Reporters v. State, 2008-NMSC-047, 144 N.M. 389, 189 P.3d 613.}


An important goal of the Procurement Code (Sections 13-1-3 through 13-1-159 NMSA 1978) is that protests are to be made and resolved quickly and in furtherance of protecting the public from all forms of corruption; Senate Appropriations Committee v. State ex rel. State

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13-1-173. Procurements after protest.

In the event of a timely protest under Section 145 (13-1-172) NMSA 1978 of the Procurement Code, the state purchasing agent or a central purchasing office shall not proceed further with the procurement unless the state purchasing agent or a central purchasing office makes a determination that the award of the contract is necessary to protect substantial interests of the state agency or a local public body.

History: Laws 1964, ch. 65, § 146.

ANOTATIONS

At important goal of the Procurement Code (Sections 13-1-28 through 13-1-189 NMSA 1978) is that protests are to be made and resolved quickly and in furtherance of protecting the public first and of assuring the fairness of the procurement process.


13-1-174. Authority to resolve protests.

The state purchasing agent, a central purchasing office or a designee of either shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved bidder or offeror. This authority shall be exercised in accordance with regulations promulgated by the secretary, a local public body or a central purchasing office which has the authority to issue regulations but shall not include the authority to award money damages or attorneys' fees.


ANOTATIONS

Appellate review of administrative protest. — A protest of the award of a contract for a unique elec-
trionic distribution upgrade project complied with the protest provisions in the Procurement Code (Sections 13-1-28 through 13-1-189 NMSA 1978) to protest a decision by the granting to the state purchasing agent or a central purchasing office (§ 13-1-173) who were given authority to resolve protests pursuant to § 13-1-174, and thereby constituted an administrative tribunal whose decision was appealable, provided by § 18-1-183, pursuant to the provisions of § 56-6-1. State ex rel. RICOM Systems v. Baca, 2008-NMSC-047, 144 N.M. 507, 109 P.3d 603.

An important goal of the Procurement Code (Sections 13-1-28 through 13-1-189 NMSA 1978) is that protests are to be made and resolved quickly and in furtherance of protecting the public first and of assuring the fairness of the procurement process.


13-1-175. Protests; determination.

The state purchasing agent, a central purchasing office or a designee of either shall promptly issue a determination relating to the protest. The determination shall:

A. state the reasons for the action taken; and
B. inform the protestant of the right to judicial review of the determination pursuant to Section 156 (13-1-183 NMSA 1978) of the Procurement Code.

History: Laws 1964, ch. 65, § 148.

ANOTATIONS

At important goal of the Procurement Code (Sections 13-1-28 through 13-1-189 NMSA 1978) is...
that protest are to be made and answered quickly and in furtherance of protecting the public fisc and of ensuring the fairness of the procurement process.

13-1-176. Protest; notice of determination.

A copy of the determination issued under Section 146 (13-1-176 RSA 1978) of the Procurement Code shall immediately be mailed to the protestant and other bidders or offerors involved in the procurement.


13-1-177. Authority to debar or suspend.

The state purchasing agent or a central purchasing office, after reasonable notice to the business involved, shall have authority to recommend to the governing authority of a state agency or a local public body the suspension or debarment of a business for cause from consideration for award of contracts other than contracts for professional services. The debarment shall not be for a period of more than three years, and a suspension shall not exceed three months. The authority to debar or suspend shall be exercised by the governing authority of a state agency or a local public body in accordance with regulations which shall provide for reasonable notice and a fair hearing prior to suspension or debarment.

History: Laws 1984, ch. 65, § 150.

13-1-178. Causes for debarment or suspension; time limit.

The cause for debarment or suspension occurring within three years of a procurement include but are not limited to the following:

A. Conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

B. Conviction of a bidder, offeror or contractor under state or federal statutes of embezzlement, theft, bribery, bribery, fabrication or destruction of records or receiving stolen property.

C. Conviction of a bidder, offeror or contractor under state or federal antitrust statutes arising out of the submission of bids or proposals.

D. Violation of a bidder, offeror or contractor of contract provisions, to be set forth in this subsection, which has resulted from the state purchasing agent or a central purchasing office to be so serious as to justify suspensions or debarment action.

1. Voluntary failure to perform in accordance with one or more contracts, provided that this failure has occurred within a reasonable time preceding the decision to impose debarment; or

2. A history of failure to perform, or of unsatisfactory performance of, one or more contracts, which has occurred within a reasonable time preceding the decision to impose debarment and prevails further that failure to perform unsatisfactory performance is caused by the contractor not be considered to be a basic for debarment.

E. Any other cause occurring within three years of a procurement which the state purchasing agent or a central purchasing office determines to be so serious as to affect responsibility as a contractor; or

F. For a willful violation by a bidder, offeror or contractor of the provisions of the Procurement Code (Sections 13-1-28 through 13-1-169 RSA 1978) within three years of a procurement.

History: Laws 1984, ch. 65, § 151.

13-1-179. Debarment or suspension; determination.

The governing authority of a state agency or a local public body shall issue a written determination to debar or suspend. The determination shall:

A. State the reasons for the action taken; and

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B. Infringe the debarred or suspended business involved of its rights to judicial review pursuant to Section 156 [13-1-180 NMSA 1978] of the Procurement Code.

History: Laws 1984, ch. 65, § 125.

13-1-180. Debarment or suspension; notice of determination.

A copy of the determination under Section 152 [13-1-170 NMSA 1978] of the Procurement Code shall immediately be mailed to the debarred or suspended business.

History: Laws 1984, ch. 65, § 125.

13-1-181. Remedies prior to execution of contract.

If prior to the execution of a valid, written contract by all parties and necessary approval authorities, the state purchasing agent or a central purchasing office makes a determination that a solicitation or proposed award of the proposed contract is in violation of law, then the solicitation or proposed award shall be canceled.

History: Laws 1984, ch. 65, § 125.

The 2002 amendment, effective May 15, 2002, substituted "executes the contract" for "awards" in the section heading; substituted "executes the contract" for "awards" on the face of the section heading; substituted "the execution of a valid, written contract by all parties and necessary approval authorities" for "an award" near the beginning of the introductory language; and substituted "the contractor" for "the business awarded the contract" in subsection B.

ANNOTATIONS

"Award of contract." — Selection of the top-ranked lowest offerer through the notice of award in an "award of a contract" under this section, in a manner that a central purchasing officer determines that a contract award was made, is not a determination that the award was lawful, regardless of whether the court expressly or impliedly renders the issuance of a new determination. Hamilton Shefing Co. v. Carlsbad Mun. Sch. Bd. of Educ., 1997-NMCA-063, 123 N.M. 434, 941 P.2d 618.


All actions authorized by the Procurement Code [Sections 13-1-2 through 13-1-199 NMSA 1978] for judicial review of a determination shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.


The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 13-8A-1."
13-1-184. Assistance to small business policy.

It shall be the policy of this state to encourage small businesses to do business with state agencies and local public bodies.


13-1-185. Assistance to small business; duties of the state purchasing agent.

A. The state purchasing agent shall issue publications designed to assist small businesses in learning how to do business with the state agencies and local public bodies.

B. The state purchasing agent shall, maintain, and make available source lists of small businesses for the purpose of encouraging procurement by the state agencies and local public bodies from small businesses.

C. The state purchasing agent and each purchasing officer shall take all reasonable action to ensure that small businesses are considered in all procurement for which they appear to be qualified.

D. The state purchasing agent shall develop training programs to assist small businesses in learning how to do business with the state agencies and local public bodies.

E. The state purchasing agent or a central purchasing officer may make special provisions for progress payments to such office or officer may deem reasonably necessary to encourage procurement from small businesses in accordance with regulations promulgated by the secretary or a central purchasing office with authority to issue regulations.

History: Laws 1984, ch. 44, § 158.

CROSS REFERENCES — For adoption of rules and regulations by secretary of general services department, see 4-11-9 NMSA 1978.

13-1-186. Assistance to small business; bid bonds; reduction.

The state purchasing agent or central purchasing officer may reduce bid bond, performance bond or payment bond requirements authorized by the Procurement Code (Sections 13-1-28 through 13-1-199 NMSA 1978) to encourage procurement from small businesses.

History: Laws 1984, ch. 65, § 159.
13-1-187. Small business; report to the legislature.

The state purchasing agent shall annually, before January 1, report in writing to the legislature concerning the awarding of state contracts to small businesses during the preceding fiscal year.

History: Laws 1984, ch. 65, § 169.


A state agency shall only acquire motor vehicles assembled in North America except for gas-electric hybrid vehicles until those vehicles are assembled in North America. For the purposes of this section, "motor vehicle" means a light duty vehicle under 8,000 pounds.


Cross references — For acquisitions of alternative fuel or gas-electric hybrid vehicles, see 33-13-5 NMSA 1978.

The 2003 amendment, effective July 1, 2003, substituted "acquisitions" for "purchases" in the section heading and rewrote the section, which formerly read: "Any state agency shall only purchase cars and trucks assembled in North America."

13-1-189. Procurements pursuant to the Corrections Industries Act.

A. All state agencies shall purchase and all local public bodies may purchase items of tangible personal property and services offered pursuant to the provisions of the Corrections Industries Act (33-5-1 through 33-5-15 NMSA 1978).

B. The corrections industries commission shall prepare a catalogue containing an accurate and complete description of all items of tangible personal property and services available. A copy of the catalogue shall be provided in each state agency and local public body. The catalogue shall contain an approximate time required for delivery of each item of tangible personal property and service.

C. The state purchasing agent or a central purchasing office shall purchase available items of tangible personal property and services from the catalogue unless a determination is made that:

(1) An emergency exists requiring immediate action to procure the items of tangible personal property or service,

(2) The specifications for the items of tangible personal property or service, including quality, quantity and delivery requirements, cannot be met within a reasonable time by the corrections department, or

(3) The price to be paid to the corrections department for the items of tangible personal property or service is higher than the bid price of comparable items of tangible personal property or services.


Cross references — For powers and duties of corrections industries commission, see 33-5-8 NMSA 1978.

13-1-190. Unlawful employee participation prohibited.

A. Except as permitted by the University Research Park and Economic Development Act (Chapter 21, Article 28 NMSA 1978) or the New Mexico Research Applications Act (53-7B-1 through 53-7B-10 NMSA 1978), it is unlawful for any state agency or local public body employee, as defined in the Procurement Code (Sections 13-1-1 through 13-1-196 NMSA 1978), to participate directly or indirectly in a procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract.

B. An employee or any member of an employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a financial interest in regard to matters pertaining to that trust.


The 2009 amendment, effective April 2, 2009, to subsection A, added "and Economic Development Act" after "University Research Park" and added "or the New Mexico Research Applications Act".

ANNOTATIONS


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13-1-191. Bribery; gratuities and kickbacks; contract reference required.

All contracts and solicitations therefor shall contain reference to the criminal laws prohibiting bribery, gratuities and kickbacks.

History: Laws 1986, ch. 65, § 144.

Cross references:—For bribery of public officer or public employee, see 30-34-1 NMSSA 1978.

For solicitation or receiving illegal kickback, see 30-41-1 to 30-41-8 NMSSA 1978.

13-1-191.1. Campaign contribution disclosure and prohibition.

A. This section applies to prospective contractors with the state or a local public body.

B. A prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public officer of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the applicable public officer exceeds two hundred fifty dollars ($250) over the two-year period.

C. The disclosure shall indicate the date, the amount, the nature and the purpose of the contribution. The disclosure statement shall be on a form developed and made available electronically by the department of finance and administration to all state agencies and local public bodies. The state agency or local public body that possesses the records or files of tangible personal property shall include in the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor for each competitive sealed proposal, sole source or small purchase contract. The form shall be filed with the state agency or local public body as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.

D. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public officer or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

E. A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing of value to an applicable public official or the applicable public official's employee during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

F. A solicitation or proposed award for a proposal contract may be canceled pursuant to Section 13-1-189 NMSSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-189 NMSSA 1978 if:

(1) a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or

(2) a prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employee during the pendency of the procurement process.

G. As used in this section:

(1) "applicable public official" means a person elected to an office or a person appointed to a position of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a competitive proposal;

(2) "family member" means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of:

(a) a prospective contractor, if the prospective contractor is a natural person; or

(b) an owner of a prospective contractor;

(3) "pendency of the procurement process" means the time period commencing with the public notice of the request for proposal and ending with the award of the contract or the cancellation of the request for proposals;

(4) "prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code (Sections 13-1-28 through 13-1-199 NMSSA 1978).
or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract; and
(5) "representative of the prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

History: Laws 2006, ch. 81, § 1; 2007, ch. 204, § 2.

The 2007 amendment, effective July 1, 2007, amended Subsection C to require a new agency or local public body to indicate the applicable public office for which disclosure of campaign contributions by prospective contractors is required for competitive sealed proposals, sole source or small purchase contracts and added Subparagraphs (a) and (b) of Paragraph (ii) of Subsection G.

13-1-192. Contingent fees prohibited.

It is unlawful for a person or business to be retained or for a business to retain a person or business to solicit or secure a contract upon an agreement or understanding that the compensation is contingent upon the award of the contract, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business and persons or businesses employed by a local public body which are providing professional services to the local public body in anticipation of the receipt of federal or state grants or loans.

History: Laws 1984, ch. 65, § 165.


It is unlawful for any state agency or local public body employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employer of any person or business contracting with the governmental body by whom the employee is employed.

History: Laws 1984, ch. 65, § 166.

13-1-194. Waives from contemporaneous employment and unlawful employee participation permitted.

A state agency or a local public body may grant a waiver from unlawful employee participation pursuant to Section 163 (13-1-190 NMSA 1978) of the Procurement Code, or contemporaneous employment pursuant to Section 165 (13-1-192 NMSA 1978) of the Procurement Code, upon making a determination that:

A. the contemporaneous employment or financial interest of the employee has been publicly disclosed;
B. the employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
C. the employee participation is in the best interests of the state agency or a local public body.

History: Laws 1984, ch. 65, § 167.

13-1-195. Use of confidential information prohibited.

It is unlawful for any state agency or local public body employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.

History: Laws 1984, ch. 65, § 168.

13-1-196. Civil penalty.

Any person, firm or corporation that knowingly violates any provision of the Procurement Code (Sections 13-1-28 through 13-1-199 NMSA 1978) is subject to a civil penalty of not more than one thousand dollars ($1,000) for each procurement in violation of any provision of the Procurement Code. The at-
13-1-197. Recovery of value transferred or received; additional civil penalty.

An amount equal to the value of anything transferred or received in violation of the provisions of the Procurement Code (Sections 13-1-28 through 13-1-199 NMSA 1978) by a transferee or transferor may be imposed as a civil penalty upon both the transferee and transferor. The civil penalty provided for in this section is imposed in addition but pursuant to the terms and conditions of Section 169 [13-1-196 NMSA 1978] of the Procurement Code.

History: Laws 1984, ch. 65, § 170.

13-1-198. Kickbacks; additional civil penalty.

Upon a showing that a subcontractor made a kickback to a prime contractor or a higher-tier subcontractor in connection with the award of a subcontract or order thereunder, it is conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the state agency or a local public body. An amount equal to the kickback is imposed as a civil penalty by the state agency or a local public body upon the recipient and upon the subcontractor making such kickbacks in addition but pursuant to the terms and conditions of Section 169 [13-1-196 NMSA 1978] of the Procurement Code.

History: Laws 1984, ch. 65, § 171.

13-1-199. Misdemeanor.

Any business or person which violates the Procurement Code (Sections 13-1-28 through 13-1-199 NMSA 1978) is guilty of a misdemeanor.

History: Laws 1984, ch. 65, § 172.

ARTICLE 1A

Purchasing Discounts

Sec. 13-1A-1. Short title.
13-1A-2. Purpose.
13-1A-3. Definition.
Sec. 13-1A-4. Review of bookkeeping and payment procedures; reports of progress.

13-1A-1. Short title.

This act (13-1A-1 to 13-1A-4 NMSA 1978) may be cited as the "Purchasing Discount Act".


13-1A-2. Purpose.

The purpose of the Purchasing Discount Act is to effect certain economies in the operation of state government by requiring state agencies to establish bookkeeping and administrative procedures to accelerate payments to vendors for supplies and equipment so as to secure price discounts offered by such vendors for early payment of accounts.
PUBLIC PURCHASES AND PROPERTY

13-1A-3. Definition.

As used in the Purchasing Discount Act, "state agency" means agency, department, commission, board and institution of state government.

History: Laws 1983, ch. 164, § 3

13-1A-4. Revision of bookkeeping and payment procedures; reports of progress.

A. Not later than July 1, 1986, each state agency shall review and revise its bookkeeping and vouchering procedures so as to effect accelerated payments to vendors for purchase of supplies and equipment in order to secure for the state the largest available price discount offered by such vendors for early payment of accounts. On or before September 1 of each year, a progress report of the implementation of the provisions of the Purchasing Discount Act shall be submitted by each state agency to the department of finance and administration and to the legislative finance committee as an addendum to its budget request for the ensuing fiscal year.

B. The department of finance and administration shall review its administrative procedures for payment of vendors by state agencies for the purchase of supplies and equipment in order to effect revised procedures to secure the largest available price discount offered by vendors for early payment of accounts. The department shall prescribe guidelines for state agencies to implement the provisions of the Purchasing Discount Act. The department shall, annually by December 15, submit a progress report to the legislature on the overall progress made by state agencies in implementing the procedures required by the Purchasing Discount Act.

History: Laws 1983, ch. 164, § 4

ARTICLE 1B

Alternative Fuel Acquisition

Sec. 13-1B-1. Short title.
Chapter 13, Article 1B NMSA 1978 may be cited as the "Alternative Fuel Acquisition Act".

The 2002 amendment, effective July 1, 2003, rewrite the section, which formerly read: "Sections 1

through 7 of this act may be cited as the "Alternative Fuel Conversion Act".

13-1B-2. Definitions.

As used in the Alternative Fuel Acquisition Act:
A. "alternative fuel" means natural gas, liquefied petroleum gas, electricity, hydrogen, a fuel mixture containing not less than twenty percent vegetable oil or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion;
B. "conventional fuel" means gasoline or diesel fuel;
C. "department" means the energy, minerals and natural resources department;
D. "fiscal" means the alternative fuel acquisition loan fund;
E. "political subdivision" means a county, municipality or school district; and
F. "vehicle" means a light duty vehicle under 8,500 pounds.

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13-1B-3. Acquisition of vehicles; exemptions.

A. Seventy-five percent of vehicles acquired in fiscal year 2003 and each fiscal year thereafter by the agencies and departments of state government and educational institutions shall be vehicles that:

1. Meet or exceed the corporate average fuel economy standards for vehicles issued by the national highway transportation safety administration of the United States department of transportation;

2. Are hybrid vehicles;

3. Are capable of operating on alternative fuel with either bi-fuel capability or dedicated engine configurations; or

4. Are plug-in electric vehicles.

B. Certified law enforcement pursuit vehicles and emergency vehicles are exempt from the provisions of the Alternative Fuel Acquisition Act. The department may exempt additional vehicles from the requirements of Subsection A of this section upon demonstration by the acquiring entity that:

1. A vehicle that meets the corporate average fuel economy standards is not suitable for its intended use or is unavailable from an original equipment manufacturer;

2. Alternative fuels are unavailable at a cost within fifteen percent of the cost of conventional fuel within the normal driving range of these vehicles;

3. A vehicle suitable for its intended use and capable of operating on alternative fuel or a gas-electric hybrid is not available from an original equipment manufacturer;

C. Equipment and installation procedures shall conform to all applicable state and federal safety and environmental regulations and standards.

D. The agencies and departments of state government, political subdivisions, and educational institutions may submit loan applications to the department to acquire loans to facilitate the acquisition of their vehicles.

E. Agencies and departments of state government and educational institutions shall provide to the department by September 1, 2003 and by September 1 of each year thereafter the total number of vehicles acquired in the preceding fiscal year and the number of those vehicles that meet the requirements of Paragraph (1) through (4) of Subsection A of this section and the make, model, fuel or power type of each and corporate average fuel economy rating for each of these vehicles.


Cross references.——For provisions requiring public acquisition of Alternative-fuel motor vehicles, with gas-electric hybrid exception, see 25-1-168 ZMGA 1978.

The 2003 amendment, effective June 20, 2003, in Subsection A, after "vehicles that", before "are capable of operating on alternative fuel", added Paragraph (1); after Paragraph (2) added "gas-electric hybrid," and added Paragraph (4); in Subsection B, added Paragraph (1); and in Subsection C, after "emergency vehicles are exempt from the provisions of the Alternative Fuel Acquisition Act", added Paragraph (1) and added "meet the requirements of Paragraphs (1) through (4) of Subsection A of this section, after "fuel add-on or power", after "type of added" and "corporate average fuel economy rating.” after "in each."
13-13-4. Revolving loan fund created; administration.
A. The "alternative fuel acquisition loan fund" is created in the state treasury as a revolving loan fund. The department shall administer the fund and make loans from the fund in accordance with the Alternative Fuel Acquisition Act.
B. The fund shall consist of earnings on balances in the fund, receipts from the repayment of loans made pursuant to the Alternative Fuel Acquisition Act and appropriations made by the legislature.
C. The fund balance shall not exceed five million dollars ($5,000,000), and any balance in the fund of five million dollars ($5,000,000) or less shall not revert to the general fund at the end of any fiscal year, interest on cash balances and repayment of loans in excess of the amount necessary to maintain the fund balance of five million dollars ($5,000,000) shall be deposited in the general fund.
D. Administrative costs of the fund shall be paid by the department until interest revenues in the fund are sufficient to cover administrative costs, at which time administrative costs may be paid from the fund.
E. Expenditures from the fund shall be supported by loan documents evidencing the intent of the borrower to repay the loan. The original loan documents shall be filed with the department of finance and administration, and a copy shall be filed with the department.


The 2003 amendment, effective July 1, 2002, substituted "acquisition" for "conversion" in three places in Subsections A and B.

13-13-5. Revolving loan fund; loans made from the fund.
A. Money available in the fund may be loaned by the department to reimburse the expenses incurred in acquiring vehicles of the agencies and departments of state government, political subdivisions and educational institutions from gasoline to alternative fuel.
B. A state agency or department, a political subdivision or an educational institution to which a loan is made shall demonstrate the ability to pay back the loan within seven years of the date that the vehicle is acquired.
C. The maximum amount loaned to acquire a vehicle shall not exceed the actual cost of acquiring the vehicle or three thousand dollars ($3,000), whichever is less.


The 2003 amendment, effective July 1, 2002, substituted "acquire" or "convert" for "convert" throughout the section and substituted "educational institutions" for "post-secondary institution" in Subsections A and B.

The 1994 amendment, effective May 18, 1994, inserted "political subdivision" in Subsection A and "political subdivisions" in Subsection B.

13-13-6. Loan program; duties of the department.
A. The department shall:
(1) administer the provisions of the Alternative Fuel Acquisition Act, except that the provisions of Section 13-13-5 NMSA 1978 shall be administered by the commission on higher education and the state department of public education for their respective programs;
(2) establish a program to make loans to the agencies and departments of state government, political subdivisions and educational institutions, individually or jointly, to facilitate the acquisition of vehicles of the agencies and departments of state government, political subdivisions and educational institutions in accordance with the Alternative Fuel Acquisition Act;

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(3) review, evaluate, and approve or reject all loan applications submitted to obtain loans from the fund;

(4) submit an annual report to the governor and the legislature evaluating the status and the effectiveness of the Alternative Fuel Acquisition Act; and

(5) have an annual audit performed on the administration of the fund.

B. The department shall adopt rules and regulations necessary to carry out the purpose of the Alternative Fuel Acquisition Act, including rules and regulations governing:

(1) the procedures and format for submitting loan applications to the department to obtain a loan from the fund;

(2) the criteria to review, evaluate, and approve loan applications;

(3) the procedure to determine the distribution of money in the fund; and

(4) the procedure to determine and notify an applicant of the progress on a loan application.


The 2002 amendment, effective July 1, 2002, substituted "acquisition" for "acquisition" throughout the section; inserted "and the state department of public education" in Paragraph A(3); and substituted "educational institutions" for "postsecondary institutions" in two places in Paragraph A(2).

The 1994 amendment, effective May 18, 1994, substituted "13-1B-7-1802, 1993" for "19th sec." by Paragraph A(3) and inserted "political subdivisions" twice in Paragraph A(3).

13-1B-7. Repayment of loans to the fund.

A. When developing the repayment schedule for loans from the fund, the department shall consider the projected savings from alternative fuel.

B. The department of finance and administration shall collect and account for the loans made from the fund, and it shall have custody of all of the original loan documents, including all notes and contracts evidencing the amount owed to the fund.

C. Loans shall be made for a period of time not to exceed seven years with an annual interest rate of five percent. A loan shall be repaid in equal monthly installments, with the first annual installment due within one year of the date on which the loan is issued.

D. Loans shall be made only for eligible items:


The 1992 amendment, effective July 1, 1992, deleted "including to" before "alternative fuel in Paragraph A(1), and substituted "amounts owed to" for "amounts owed to" near the end of Subsection B.

ARTICLE 1C

State Use Act

Sec. 13-1C-1. Short title.

Sec. 13-1C-2. Purpose.

Sec. 13-1C-3. Definitions.

Sec. 13-1C-4. Council for purchasing from persons with disabilities; appointments; organization.

13-1C-1. Short title.

Sections 1 through 7 of this act (13-1C-1 through 13-1C-7 NMSA (1978) may be cited as the "State Use Act".


Effective dates. — Laws 2005, ch. 334 contained no effective date provisions, so, pursuant to N.M.S.

Contr. art. IV, § 23, was effective June 17, 2006, 90 days after adjournment of the legislature.

13-1C-2. Purpose.

The purpose of the State Use Act is to encourage disabled persons with disabilities to achieve maximum personal independence through useful and productive employment by ensuring an expanded and
13-1C-3 PUBLIC PURCHASES AND PROPERTY 13-1C-4

constant market for services delivered by persons with disabilities, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and entitlements.

History: Laws 2005, ch. 254, § 3.
Effective date: — Laws 2005, ch. 254 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adoption of the legislation.

13-1C-3. Definitions.

As used in the State Use Act:

1. "Central nonprofit agency" means a nonprofit agency approved pursuant to rules of the council to facilitate the availability of services to people with disabilities:
   (1) qualified individuals; and
   (2) community rehabilitation programs.

2. "Community rehabilitation program" means a nonprofit entity:
   (1) that is organized under the laws of the United States or this state, operated in the interest of persons with disabilities, and operated so that no part of the income of which it is exempt from the benefit of any shareholder or other person;
   (2) that complies with applicable occupational health and safety standards as required by federal or state law; and
   (3) that, in the provision of services, whether or not provided under the State Use Act, employs during the state fiscal year at least seventy-five percent persons with disabilities in direct labor for the provision of services;

3. "Council" means the New Mexico council for purchasing from persons with disabilities;

4. "Direct labor" means all work directly related to the provision of services, but not work required for or relating to supervision, administration or inspection.

5. "Local public body" means a political subdivision of the state and the political subdivisions' agencies, instrumentalities and institutions.

6. "Person with disabilities" means a person who has a mental or physical impairment that constitutes or results in a substantial impediment to employment as defined by the federal Rehabilitation Act of 1973.

7. "Qualified individual" means a person with a disability who is a business owner, or a business that is primarily owned and operated by persons with disabilities that employs at least seventy-five percent persons with disabilities in the provision of direct labor, which has been approved by the council to provide services to state agencies and local public bodies. A person who is receiving services pursuant to an individualized plan of employment from the vocational rehabilitation division of the public education department or from the commission for the blind shall be presumed to be a person with disability as shall a person who is receiving supplemental security income or social security benefits based on disability.

8. "State agency" means a department, commission, council, board, committee, institution, legislative body agency, government corporation, educational institution or official of the executive, legislative or judicial branch of government of this state; and

9. "State purchasing agent" means the director of the purchasing division of the general services department.

History: Laws 2006, ch. 354, § 3.
Effective date: — Laws 2006, ch. 354 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2006, 90 days after adoption of the legislation.

13-1C-4. Council for purchasing from persons with disabilities; appointment; organization.

A. The "New Mexico council for purchasing from persons with disabilities" is created. The council shall be composed of the following nine members:

1. the state purchasing agent or the agent's designee;

2. two persons, appointed by the governor, who represent state agencies that purchase significant amounts of goods and services from the private sector, or their designees;

3. a person, appointed by the governor, who is a state-employed vocational rehabilitation counselor and who is familiar with employment needs of persons with disabilities and with current pricing and marketing of goods and services, and

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13-1C-5. Authority and duties of the council; rules.

A. The council shall adopt rules in accordance with the procedures set out in Subsection B of Section 5-1C-15 NMSA 1978 that:

(1) determine which services provided by persons with disabilities are suitable for sale to state agencies and local public bodies;

(2) establish, maintain and publish a list of all the services identified in Paragraph (1) of this subsection. The council shall periodically review and revise this list as products or services are added or removed. The council shall make the list available to all purchasing officials of state agencies and local public bodies;

(3) verify the fair market prices of the services identified in Paragraph (1) of this subsection and periodically review the fair market prices in accordance with changing market conditions to ensure that services offer the best value for state agencies and local public bodies. In verifying the fair market value of services, the council shall consider amounts being paid for similar services purchased by the federal government, the state and local public bodies and by private businesses, and the actual cost of providing the services at a community rehabilitation program, taking into consideration the benefits associated with employing persons with disabilities;

(4) establish a procedure to certify eligible community rehabilitation programs and qualified individuals that have services suitable for procurement by state agencies and local public bodies that will be paid on the list established in Paragraph (3) of this subsection;

(5) establish a procedure for approval of a central nonprofit agency that shall hold contracts, facilitate the equitable distribution of orders for services to be procured by state agencies and local public bodies and market approved services to state agencies and local public bodies.

B. The council shall:

(1) address any other matter necessary to the proper administration of the State Use Act and

(2) ensure that the work provides opportunities for integration with nondisabled persons, fair pay and adds value to the service provided.

13-1C-6. Existing vendor exclusion.

Services provided pursuant to and facilities covered by Section 22-14-27 NMSA 1978 are excluded from the State Use Act.
13-1C-7. Procurement by state agencies and local public bodies; cooperative agreements.

A. A state agency or local public body intending to procure a service on a list published by the council shall, in accordance with rules of the council, procure the service at the price established by the council or a lower cost service. The agency will procure the service according to the provisions of the Procurement Code (Sections 13-7-1 through 13-7-195 NMSA 1978).

B. The council and a state agency or local public body may enter into a cooperative agreement for effective coordination of the objectives of the State Use Act and any other law requiring procurement of services from a state agency or local public body.

History: Laws 2005, ch. 244, § 7.
Effective date: July 1, 2005, 30 days after adjournment of the legislature.

ARTICLE 2
Freight Bills - Audit by State

13-2-1. Repealed.

History: Laws 2001, ch. 75, § 1 repealed 13-2-1 NMSA 1978, as enacted by Laws 1977, ch. 245, § 1, regarding the auditing of freight bills by the public regulation commission, effective June 15, 2001. For provisions of former section, see the 2000 NMSA 1978 on New Mexico One Source of Law.

ARTICLE 3
Public Printing Contracts

(Redacted by Laws 1984, ch. 65, § 176.)

13-3-1 to 13-3-5. Repealed.

History: Laws 1984, ch. 60, § 175, repealed 13-3-1 to 13-3-5 NMSA 1978, as enacted by Laws 1957, ch. 166, § 1 to 5, relating to preferences for New Mexico firms in awards of public printing contracts, effective November 1, 1984. For present comparable provisions, see 12-5-51 NMSA 1978.

ARTICLE 4
Public Works Contracts

See Arts.
13-4-2. Public works contracts.
13-4-2.1. Definition; construction contract; procurement.
13-4-2.2. Application of provisions.
13-4-2.3. Bid solicitation definition; application of preference. (Effective July 1, 2022.)
13-4-2.4. Public works contracts, procurement.
13-4-2.5. Use of New Mexico materials.
13-4-2.6. Discrimination against New Mexico goods, services, products, materials.
13-4-2.7. Use of New Mexico lumber in public buildings required.
13-4-2.8. Public works contracts, procurement.
13-4-2.9. Penalty.
13-4-2.10. Editorial.
13-4-2.11. Definition.
13-4-11. Prevailing wage and benefits rate above.
13-4-11.1. Minimum wages and benefits on public works, weekly payment, withholding taxes.
13-4-12. Repealed.
13-4-13.1. Public works projects; registration of subcontractors and subcontracts.
13-4-14. Payment of wages from funds withheld, list of contributors violating act, additional right of wages earned.
13-4-14.1. Labor enforcement fund creation, use.
13-4-14.2. Registration cancellation, suspension, suspension; inactivating relief.
13-4-15. Appeals.

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15-4-1 PUBLIC WORKS CONTRACTS 15-4-1

15-4-1.01 Outstanding contracts and obligations.
15-4-1.06. Construction contract performance and payment bonds.
15-4-1.09. Rights of person furnishing labor or materials.
15-4-1.39. Additional bonds in case of insolvency or sureties.
15-4-1.42. Public contracts with responsible persons or partnerships or unincorporated for services.
15-4-2. Delegation of authority to administer contracts.
15-4-2.02. Secretary of state as agent for service.
15-4-2.03. Service where not designated住所.
15-4-2.04. Continuance.
15-4-2.05. Limitations.

15-4-1. Public works contracts.

It is the duty of every office, department, institution, board, commission or other governing body or officer thereof of this state or any political subdivision thereof to award all contracts for the construc-
tion of public works or for the repair, reconstruction, including highway reconstruction, demolition or alteration thereof, to a resident contractor whenever practicable.

Cross references: For county buildings upon change of county-assess see § 4-06-92 NMSA 1978.
For contracts for consultants, jobs or bridges where approval of bond is necessitated see § 4-06-14 NMSA 1978.
For supplies to be residents, see § 4-05-8 to 4-10-10 NMSA 1978.

ANNOTATIONS

Award to resident contractor is mandatory.

The requirement in Sections 15-4-1.02 to 15-4-1.09 NMSA 1978 is a strictu
acceptance of the "whenever practicable" language of Section 15-4-1.01 NMSA 1978 as measured
by the formula in Section 15-4-1.05 NMSA 1978 and if a nondwelling contractor body within five percent of a nonresident contractor, the governmental entity has
no discretion but to award the contract to the resident contractor. 1983 NMC 106, 131 N.M. 250, 91 P.2d 295.

Realization of contract. . .

The FBWA argument that the "whenever practicable" language of Section 15-4-1.02 is a strictu
read of the formula as set out in Section 13-4-253, so that it is no longer necessary for a governmental en-
tity to make a system finding any award to the resident contractor is not "practicable" under the cir-
cumstances, as prevailing authority before 1983 ad-
sented, if a resident contractor does not fall within 5 percent of a nondwelling contractor's low bid, the legis-
lature has decided as a matter of law that the taxpayer will not be burdened with the additional appro-

"Practicable" defined.

"Practicable" has been defined to mean something which is pract-
able of being performed or effected under the provi-
sion of a contract, including a valuation of practi-
cability or practicability, the public involved must consider under the availability or utili-
ization of the contractor, time factors involved in the

construction and after scarcely incident to such con-
When written finding required. . .

An argument that the "whenever practicable" language of Section 15-4-1.01 NMSA 1978, as measured
by the formula in Section 15-4-1.05 NMSA 1978, makes it necessary for a governmental entity to make a
system finding any award to the resident contractor is not "practicable" under the cir-
cumstances, as prevailing authority before 1983 ad-
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"Practicable" defined.

"Practicable" has been defined to mean something which is pract-
able of being performed or effected under the provi-

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13A-1.1 Definitions; construction contract; contractor.

As used in this Chapter 13, Article 4 NMSA 1978:
A. "contract" or "construction contract" includes a construction manager at risk contract entered into pursuant to the Educational Facility Construction Manager Act at Risk Act (13-1-124.1 through 13-1-124.5 NMSA 1978); and
B. "contractor" includes a construction manager at risk selected pursuant to the Educational Facility Construction Manager Act at Risk Act.


A. For the purposes of this section:

(1) "Formal bid process" means a competitive sealed bid process;

(2) "Formal request for proposals process" means a competitive sealed proposal process, including a competitive sealed qualifications-based proposal process;

(3) "Public body" means a department, commission, council, board, committee, institution, legislative body, agency, governmental corporation, educational institution or official of the executive, legislative or judicial branch of the government of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts, local school boards and all municipalities, including home-rule municipalities;

(4) "Public works contract" means a contract for construction, construction management, architectural, landscape architect, engineering, surveying or interior design services;

(5) "Resident contractor" means a person that has a valid resident contractor certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978 but does not include a resident veteran contractor;

(6) "Resident veteran contractor" means a person that has a valid resident veteran contractor certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978.

B. For the purpose of awarding a public works contract using a formal bid process, a public body shall deem a bid submitted by a:

(1) Resident contractor to be five percent lower than the bid actually submitted;

(2) Resident contractor with annual revenues of one million dollars ($1,000,000) or less to be ten percent lower than the bid actually submitted;

(3) Resident veteran contractor with annual revenues of more than one million dollars ($1,000,000) but less than five million dollars ($5,000,000) to be eight percent less than the bid actually submitted subject to the limitation provided in Subsection F of this section; and

(4) Resident veteran contractor with annual revenues of five million dollars ($5,000,000) or more to be seven percent less than the bid actually submitted subject to the limitation provided in Subsection F of this section.

C. When a public body awards a contract using a formal request for proposals process, not including contracts awarded on a point-based system, the public body shall award an additional:

(1) Five percent of the total weight of all the factors used in evaluating the proposals to a resident contractor;

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(2) Any percent of the total weight of all the factors used in evaluating the proposal to a resident veterinarian contractor that has annual revenues of one million dollars ($1,000,000) or less;

(3) eight percent of the total weight of all the factors used in evaluating the proposal to a resident veterinarian contractor that has annual revenues of more than one million dollars ($1,000,000) but less than five million dollars ($5,000,000) subject to the limitation provided in Subsection F of this section; and

(4) seven percent of the total weight of all the factors used in evaluating the proposal to a resident veterinarian contractor that has annual revenues of five million dollars ($5,000,000) or more subject to the limitations provided in Subsection F of this section.

H. When a joint bid or joint proposal is submitted by a combination of resident veterinarians, residents or non-resident contractors, the preference provided pursuant to Subsection B, C or D of this section shall be calculated in proportion to the dollar amount of the goods or services provided under the contract, that will be performed by each contractor as specified in the joint bid or joint proposal.

I. The preference pursuant to Paragraphs (3) and (4) of Subsection H of this section, Paragraphs (6) and (7) of Subsection C of this section and Paragraphs (3) and (4) of Subsection D of this section shall be limited, in any calendar year, to an aggregate amount of two million dollars ($2,000,000) or more subject to the limitations provided in Subsection F of this section.

J. A public body shall not award a contract to a resident veterinarian contractor that has annual revenues of five million dollars ($5,000,000) or more subject to the limitations provided in Subsection F of this section.

K. The procedures provided in Sections 13-1-120 through 13-1-123 NMSA 1978 or in any applicable purchasing ordinary apply to a protest to a public body concerning the awarding of a contract in relation to this section.


Annotaons

13-4-2. Resident contractor defined; application of preference. (Effective July 1, 2022.)

A. For the purposes of this section:

(1) "Competitive sealed bid process" means a competitive sealed bid process;

(2) "Competitive sealed qualifications-based proposal process" means a competitive sealed qualifications-based proposal process;

(3) "Public body" means a department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of the state or any political subdivision of the state and the agencies, instrumentalities and institutions thereof including two-year post-secondary educational institutions, school districts, local school boards and all municipalities, including home-rule municipalities;

(4) "Public works contract" means a contract for construction, construction management, architectural, landscape architectural, engineering, surveying or interior design services; and

(5) "Resident contractor" means a person that has a valid resident contractor certificate issued by the taxation and revenue department pursuant to Section 13-12-22 NMSA 1978.

B. For the purpose of awarding a public works contract using a formal bid process, a public body shall deem a bid submitted by a resident contractor to be five percent lower than the bid actually submitted.

C. When a public body awards a contract using a formal request for proposals process:

(1) five percent of the total weight of all the factors used in evaluating the proposals shall be awarded to a resident contractor based on the resident contractor possessing a valid resident contractor certificate; or

(2) if the contract is awarded based on a point system, a resident contractor shall be awarded the equivalent of five percent of the total possible points to be awarded based on the resident contractor possessing a valid resident contractor certificate.

D. When a joint bid or joint proposal is submitted by both resident and nonresident contractors, the resident contractor preference provided pursuant to subsection B or C of this section shall be reduced in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided

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13-4-3. Federal aid projects exempt.

The provisions of Sections 13-4-1 through 13-4-4 NMSA 1978 shall not apply to federal aid construction projects or to the expenditure of federal funds designated for a specific contract is involved.

History: Laws 1973, ch. 26, § 2; 1941 Comp. 1-650; 1953 Comp. 1-6-4-2; 1968, ch. 64, § 2.

13-4-4. [Contracts in violation declared void.]

All contracts executed in violation of this act [13-4-1 to 13-4-4 NMSA 1978] shall be void and of no effect.

History: Laws 1933, ch. 50, § 4; 1941 Comp. 1-6-56; 1953 Comp. 1-6-4.

13-4-5. Use of New Mexico materials.

In all public works within New Mexico, whether constructed or maintained by the state or by a department, board or commission of the state or by any political subdivision of the state, or in any construction or maintenance to which the state or any political subdivision of the state has granted aid, preference shall be given to materials produced, grown, processed or manufactured in New Mexico by citizen or residents of New Mexico. In any case where, in the judgment of the different officers, boards, commissions or other authority in this state vested with the power of contracting for material used in the construction or maintenance of public works referred to in this section, it appears that an attempt is being made by producers, growers, processors or manufacturers in the state to form a trust or combination of any kind for the purpose of fixing or regulating the price of materials to be used in any public works to the detriment of or to the state; the provisions of this section shall not apply.

History: Laws 1933, ch. 19, § 1; 1941 Comp. 1-6-500; 1953 Comp. 1-6-6; Laws 1968, ch. 16, § 1; 1957, ch. 1; § 1957, ch. 2; 1957, ch. 2; 1961, ch. 174, § 1; 1992, ch. 5; 1995, ch. 5; 2001, ch. 171, § 2; 2011 (1st S.S.), ch. 7, § 2; 2012, ch. 36, § 2; repealed and replaced by Laws 1968, ch. 28, § 1.

Republics and renunciations — Laws 1912, ch. 58, § 6; repealed former 13-4-3 NMSA 1978, as enacted by Laws 1936, ch. 66, § 2, and replace the section set out above effective July 1, 2022.

Annotations
Provisions outside title not given effect — The body of this section is broader than the title of the act, and as a result these provisions outside the title will not be given effect. 1913-34 Op. Att’y Gen. 34-723.

Operative of section — The operation of this section should be confined to construction of public works in which it would be practical to give preference to materials produced in New Mexico, and should be left to the discretion of boards of commissions having control of the work. 1923-34 Op. Att’y Gen. 34-725.


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13-4-6. [Discrimination against New Mexico softwood timber in building codes prohibited.]

It shall be unlawful for any building code or codes of this state or of any county, municipality or township therein, or of any agency, bureau or political division or subdivision of the state government to discriminate in any way against the softwood species of timber, such as Douglas fir and ponderosa pine, grown in New Mexico. All the various grades of timber produced therefrom and the softwood species of New Mexico lumber shall be considered, regarded and accepted prima facie as the equal in strength and durability of similar softwood species produced elsewhere, and the burden shall rest upon any person contesting that provision to prove to the contrary in a court of competent jurisdiction by a preponderance of the evidence.

History: Laws 1939, ch. 260, § 2; 1941 Comp., § 6-4-6; 1953 Comp., § 6-4-1.

13-4-7. [Use of New Mexico timber in public buildings required.]

In the construction, erection or repair of all of its public buildings and structures the state of New Mexico and all counties, municipalities and townships therein, and all agencies, bureaus or political divisions or subdivisions of the state government are hereby required to use, whenever the species of lumber necessary for such construction or repair work is available in this state, such species of lumber produced from the timber grown in the state of New Mexico; and no person employed to draw specifications therefor shall so word such specifications as to discriminate against any lumber produced from New Mexico as grown timber.

History: Laws 1939, ch. 206, § 5; 1941 Comp., § 6-4-7; 1953 Comp., § 6-4-2.


The provisions of Section 13-4-7 NMSA 1978 shall not apply to any public works projects in which the United States is interested or which involve participating federal funds.

History: 1925 Comp., § 6-4-8.1, enacted by Laws 1965, ch. 106, § 1.

13-4-9. [Penalty.]

Any person, firm, association or corporation distributing lumber in the state of New Mexico after June 30, 1938, for any of the purposes heretofore set forth in this act (13-4-4, 13-4-5, 13-4-8 NMSA 1978) or any contractor in this state using lumber for any of said purposes who shall deliberately violate any of the provisions of this act shall, upon conviction, be subject to a penalty of not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000.00) or imprisonment in the county (ad) for not less than thirty (30) nor more than ninety (90) days for each violation hereunder; provided, that in the case of a violation by a firm, association or corporation, the jail sentence, if one is imposed, shall be upon the officer, agent or person of each firm, association or corporation responsible for such violation.

History: Laws 1939, ch. 206, § 4; 1941 Comp., § 6-4-9.

13-4-10. Short title.

Sections 13-4-10 through 13-4-17 NMSA 1978 may be cited as the "Public Works Minimum Wage Act".
13-4-10. Definitions.

As used in the Public Works Minimum Wages Act [13-4-10 to 13-4-17 NMSSA 1976]:

A. "Director" means the director of the division.

B. "Division" means the labor relations division of the workforce solutions department.

C. "Fringe benefit" means payments made by a contractor, subcontractor, employer or person acting as a contractor if the payment has been authorized through a negotiated process or by a collective bargaining agreement, for:

1. holidays;
2. time off for sickness or injury;
3. time off for personal reasons or vacation;
4. bereavement;
5. authorized expenses incurred during the course of employment;
6. health, life and accident or disability insurance;
7. profit-sharing plans;
8. contributions made on behalf of an employee to a retirement or other pension plan, and any other compensation paid to an employee other than wages;

D. "Labor organization" means an organization of any kind, or an agency or employee representative committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with, employees concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work; and

E. " Wage" means the basic hourly rate of pay.

History: 1976 Comp., ch. 13-4-10, as enacted by Laws 2009, ch. 286, § 2.

13-4-11. Prevailing wage and benefit rates determined; minimum wages and fringe benefits on public works weekly payment with holding funds.

A. Every contract or project in excess of sixty thousand dollars ($60,000) that the state or any political subdivision thereof has entered into for construction, alteration, demolition or repair or any combination thereof, including painting and decorating of public buildings, public works or public roads of the state and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wage and fringe benefits to be paid to various classes of laborers and mechanics, which shall be based upon the wages and benefits that will be determined by the director to be prevailing for the corresponding classes of laborers and mechanics employed on the contract work of a similar nature in the state or locality, and every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate or any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates set less than those determined pursuant to Subsection B of this section to be the prevailing wage rates and prevailing fringe benefit rates stated for the project.

B. The director shall determine prevailing wage rates and prevailing fringe benefit rates for respective classes of laborers and mechanics employed on public works projects at the same wage rates and fringe benefit rates used in collective bargaining agreements between labor organizations and their signatory employers that govern predominately similar classes or classifications of laborers and mechanics for the locality of the public works project and the crafts involved, provided that:

1. if the prevailing wage rates and prevailing fringe benefit rates cannot reasonably and fairly be determined in a locality because no collective bargaining agreements exist, the director shall determine the prevailing wage rates and prevailing fringe benefit rates for the state or most similar class or classification of laborer or mechanic in the nearest and most similar neighboring locality in which collective bargaining agreements exist.

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Repealed and reenacted. — Laws 1963, ch. 33, § 1, repealed 6-6-1963 Comp.; relating to withholding wages and the Minimum Wages Act, and enacted the same subject.

The 1992 amendment, effective July 1, 1992, in Subsection A, after "averaging the minimum wages", added "and fringe benefits", after "based upon the wages", added "and benefits", after "payment received at wages rates", added "and fringe benefits rates" and after "but less than farm", deleted "directed stated in the wages rates", and added "determined pursuant to Subsection § of this section to be the prevailing wages rates and prevailing fringe benefit rates", deleted former Subsection B, which provided the director of labor and industrial relations to conduct a reference program for obtaining and compiling wage-rate information; deleted former Subsection C, at the beginning of the subsection, deleted "scale of wages" and added "prevailing wage rates and prevailing fringe benefit rates", after "the difference between the", deleted "rates of wages" and added "prevailing wage rates and prevailing fringe benefit rates", and after "mechanics on the work and that", changed "rates received by such laborers" to "wage rates and fringe benefit rates required by the "laws".

The 2000 amendment, effective July 1, 2000, increased the threshold amount of a contract or project from §000 to $60,000 in Subsection A and added Subsection B to provide that the director may receive issue subpoenas for production of documents or witnesses and attach and prohibit the release of any evidence payment until the director receives any probable cause to believe that a violation has occurred.

The 2001 amendment, effective July 1, 1993, substituted "director of labor and industrial division of the labor department for "director" and for "Chief of the labor and industrial bureau" throughout the section, inserted "minimum" wherever the context required the term, deleted Subsection D on contract or project for "contract based upon these specifications" into the middle and "minimum wages rates" inserted for the project for "contract specifications" at the end in Subsection E, inserted "person acting as a contractor" near the beginning and substituted "employee on the project" the difference between the "wages rates and prevailing fringe benefit rates" with the labor and industrial division of the labor department for "employed by the contractor or subcontractor on the project the difference between the rates of wages required by the contract" near the middle and made minor stylistic changes throughout the section.

ANNOTATIONS

The word "determines" is synonymous with "ascertains", City of Albuquerque v. Burwell, 64 N.M. 394, 333 P.2d 1068 (1958).

Private non-profit corporations. — The standard to be applied when determining whether private non-profit corporations that lease hospitals from government entities meet the definition of "political subdivision" under this section is whether the te-
notice of termination of a contract or subcontract pursuant to the provisions of this section may appeal the finding of the director as provided in the Public Works Minimum Wage Act.


Repeals and amendments.—Laws 1983, ch. 35, § 3, repealed 6-6-7, 1983 Comp., relating to failure to pay minimum wage and create the above section.

The 2009 amendment, effective July 1, 2009, af-

The 2011 amendment, effective June 17, 2011, in-

The 2013 amendment, effective July 1, 2013, af-

The 2015 amendment, effective June 17, 2015, to-

The 2017 amendment, effective June 15, 2017, in-

13-4-13.1 Payroll records.-All contractors and subcontractors shall keep payroll records relating to wages paid to employees including all information which is necessary to determine the amount of wages paid to each employee and the amount of taxes withheld from such wages. The records shall be made available to the director upon request.

13-4-14. Payment of wages from funds withheld.—List of contractors violating act; additional right of wage earners.

A. The director shall certify to the contracting agency the names of persons or firms the director has found to have disregarded their obligations to employees under the Public Works Minimum Wage Act (12-4-10 to 12-4-17 NMSA 1978) and the amount of wages. The contracting agency shall pay or cause to be paid the affected laborers and mechanics, from any accrued payments withheld under the terms of the contract or designated for the project, any wages or fringe benefits found due to the contractor pursuant to the Public Works Minimum Wage Act. The director shall, upon notice to the affected persons, distribute a list to all departments of the state giving the names of persons or firms the director has found to have willfully violated the Public Works Minimum Wage Act. No contract

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or project shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership or association in which the persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of the persons or firms. A person to be included on the list to be distributed may appeal the finding of the director as provided in the director, as provided in the Public Works Minimum Wage Act.

B. If the accrued payments withheld under the terms of the contract, as mentioned in Subsection A of this section, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages or fringe benefits required pursuant to the Public Works Minimum Wage Act, the director and the mechanics shall have the right of action or intervention or both against the contractor or person acting as a contractor and the contractor's or person's sureties, confirmed by law upon the persons furnishing labor and materials, and, in such proceeding, it shall be to define that the laborers and mechanics accepted any agreement to less than the required rate of wages or voluntarily made refunds. The director shall reform to matters to the district attorney in the appropriate county, and it is the duty and responsibility of the district attorney to bring civil suit for wages and fringe benefits under the rules and regulations provided for in subsection C of this section. In the event of any violation of the Public Works Minimum Wage Act or implementing rules, the contractor, subcontractor, employer or person acting as a contractor responsible for the violation shall be liable to any affected employee for the employee's unpaid wages or fringe benefits. In addition, the contractor, subcontractor, employer or person acting as a contractor shall be liable to any affected employee for liquidated damages beginning with the first day of noncompliance with the terms of one hundred dollars ($100) for each calendar day on which a contractor, subcontractor, employer or person acting as a contractor has willfully required or permitted an individual laborer or mechanic to work in violation of the provisions of the Public Works Minimum Wage Act.

D. In an action brought pursuant to subsection C of this section, the court may award, in addition to all other remedies, attorney fees and costs to an employee adversely affected by a violation of the Public Works Minimum Wage Act by a contractor, subcontractor, employer or person acting as a contractor.


Regulations and reenactments. — Laws 1983, ch. 25, § 6, repealed 4-6-93, 1983 Comp., relating to payment of wages equivalently withheld and rights of workers, and mechanics.

The 2000 amendment, effective July 1, 2000, in subsection A, in the second sentence, after "any wages", added "or fringe benefits", in subsection B, after "or wages", added "or fringe benefits", and in the last sentence, after "right for wages", added "or benefits", in subsection C, after "employee's unpaid wages", added "or fringe benefits"; and in subsection D, after "laborer," changed "employee" to "employer".

The 2000 amendment, effective July 1, 2000, changed the amount of liquidated damages in subsection C from $10 to $100 and added subsection D to provide that the court may award attorney fees and costs to an employee adversely affected by a violation of the Public Works Minimum Wage Act.

The 1991 amendment, effective July 1, 1991, substituted "Director of the labor and industrial division of the labor department" for "Director of the labor department and director" for "Director of the labor department" in subsection C, "commissions" for "commissions" throughout the section, in subsection A, inserted or designated for the section in the second sentence and "or project" in the fourth sentence; in subsection B, inserted or designated for the section in the first sentence and "wages or benefits" in the second sentence.

ANNOATIONS

Directors cannot or employer to pay additional wages, must first follow certification procedures. — Section 13-4-1112 NMSA 1978 expressly confers upon the labor commissioner (now director of the labor and industrial division) the power to determine the prevailing wage for purposes of the Public Works Minimum Wage Act. The commissioner (director) does not have the power to order an employer to pay the additional wages determined to be due his employees. If the commissioner (director) has determined that a person or firm has failed to pay the prevailing minimum wage, then the certification procedure outlined in subsections A and B must be followed. Greenberg v. New Mexico Labor & Industry Comm., 104 N.M. 634, 726 P.2d 351 (1986).

13-4-14.1. Labor enforcement fund; creation; use.

The "labor enforcement fund" is created in the state treasury. The fund shall consist of contractor and subcontractor registration fees collected by the division and all investment and interest income from the fund. The fund shall be administered by the division, and money in the fund is appropriated to the division for administration and enforcement of the Public Works Minimum Wage Act (13-4-1506 13-4-17 NMSA 1978). Money in the fund shall not revert to the general fund at the end of a fiscal year.
13-4-14.2 Registration cancellation, revocation, suspension; injunctive relief.

The director may:

1. upon an application by the party subject to the registration provisions, or suspend, modify, or suspend with conditions, including provision for the registration of any party required to be registered pursuant to the Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978] for failure to comply with the registration provisions or for good cause, subject to appeal pursuant to Section 13-4-15 NMSA 1978, and
2. seek injunctive relief in district court for failure to comply with the registration provisions of the Public Works Minimum Wage Act.

13-4-15. Appeals.

A. Any interested person may appeal any determination, finding or action of the director made pursuant to the Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978] to the labor and industrial relations sitting as the appeals board by filing notice of the appeal with the director within fifteen days after the determination has been issued or notice of the finding or action has been given as provided in the Public Works Minimum Wage Act.

B. The labor and industrial relations, sitting as the appeals board, shall adopt rules as it deems necessary for the proper disposition of appeals. A copy of the rules shall be filed with the librarian of the supreme court law library.

C. The appeals board, within ten days after the filing of the notice of the appeal, shall set the matter for oral hearing within thirty days and, following the hearing, shall render a decision within ten days after the close of the hearing and promptly mail copies of the decision to the parties.

D. Decisions of the appeals board may be appealed pursuant to the provisions of Section 39-3-1 NMSA 1978.


Sections 13-4-10 through 13-4-17 NMSA 1978 shall not be construed to supersede or impair a more stringent requirement imposed by federal law to provide for the establishment of specified wage rates.
13-4-17. Outstanding contracts and invitations.

The Public Works Minimum Wage Act (13-4-10 to 13-4-17 NMSA 1978) shall not affect a contract existing or a contract that may be entered into pursuant to invitations for bids that are outstanding at the time of enactment of this act.


The 2000 amendment, effective July 1, 2000, made grammatical changes.


A. When a construction contract is awarded in excess of twenty-five thousand dollars ($25,000), the following bonds or security shall be delivered to the state agency or local public body and shall become binding on the parties upon the execution of the contract. If a contractor fails to deliver the required performance and payment bonds, the contractor's bid shall be rejected, the bond security shall be used to the extent of actual damages. Award of the contract shall be made pursuant to the Procurement Code (Sections 15-1-01 through 15-1-300 NMSA 1978) in the following manner:

(1) a performance bond satisfactory to the state agency or local public body, executed by a surety company authorized to do business in this state and said surety to be approved by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract; and

(2) a payment bond satisfactory to the state agency or local public body, executed by a surety company authorized to do business in this state and said surety to be approved by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

B. The state purchasing agent or the central purchasing office may reduce the amount of the performance bond required prior to solicitation to not less than fifty percent of the contract price if it is determined to be less costly or more advantageous to the state agency or local public body to self-insure a part of the performance of the contractor.

C. The state purchasing agent or the central purchasing office may reduce the amount of the payment bond required prior to solicitation of not less than fifty percent of the contract price if it is determined that it is in the best interest of the state agency or local public body to do so. Factors to be considered in order to make such a determination include, but are not limited to:

(1) the value and number of subcontracts to be awarded by the contractor; and

(2) the value of the contract.

D. Nothing in this section shall be construed to limit the authority of the state agency or local public body to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection A of this section.

E. For contracts under twenty-five thousand dollars ($25,000) the state agency or local public body may impose in its sole and complete discretion the requirements of Subsections A, B and C of this section.

Cross references -- For references qualified as surrogates, see 66-3-1, NMSA 1978.
Regulations and enforcements. -- State Agencies, Rules 1, 13-4-18 NMSA 1978, as amended by Laws 1987, ch. 251, § 1, and enacted the above section, effective June 10, 1987.

ANNOTATIONS
I. GENERAL CONSIDERATION.
II. PROFESSIONAL ENTITIES PROTECTED.
III. SUBCONTRACT LIABILITY.
IV. TIMING TO SUIT.
V. GENERAL CONSIDERATION.


Bond requirements. — The Little Miller Act (13-4-18 to 13-4-20 NMSA 1978) requires a bond conditioned for the performance and completion of contract according to its terms, in "compliance with all requirements of law," and also for payment if labor and materials and is more encompassing than the federal Miller Act, 40 U.S.C. § 270a. Employers' Liability of Co. v. C.B. Davis Contracting Co., 81 N.M. 93, 469 P.2d 609 (1970).

Section gives remedy comparable to mechanic's lien. — Sections 13-4-18 and 13-4-19 NMSA 1978 are intended to provide a remedy comparable to a mechanic's lien to materialsmen who provide supplies for a state government construction project.
Rights of survey. — A survey that fairly covers performance and payment bonds, and that satisfies claims against the contractor by paying laborers and material suppliers, has superior rights as against the contractor's secured creditors to final payment proceeds and reclamation funds held by the project owner. New Mexico v. Tranynape, Inc., Co., 3060-NMCA-2, 138 N.M. 624, 996 P.2d 524 (1999).

When a release of survey is necessary. — Failure of a school board to pay 25% of the contract price for a school building from the contractor, until final settlement is, does not release the current from liability to the laborers or materialmen. Southwestern Bank & Trust Co. v. Am. Employees Ins. Co., 97 N.M. 312, 39 P.2d 985 (1993).

Extension of survey liability. — Although the general rule is that the liability of a surveyor cannot be avoided by the payment of labor and materials, a contractor can be held responsible for any performance and payment bonds, and the surveyor's bond is subject to the lien of the contractor and all others whose labor and materials are furnished by them.
13-4-18. Rights of person furnishing labor or material and right of state with respect to taxes due.

A. Every person, firm or corporation who has furnished labor or material in the prosecution of work provided for in such contract, in respect of which a payment bond is furnished under Section 13-4-18 NMSA 1978, and who has not been paid in full therefor before the expiration of a period of ninety days after the date on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, and the state, in respect of which a payment bond is furnished under Section 13-4-18 NMSA 1978, by a contractor who does not have its principal place of business in New Mexico, for all taxes due arising out of construction services rendered under the contract, shall have the right to sue on such payment bond for the amount of the balance thereof unpaid at the time of the institution of such suit, and to prosecute such action to final execution and judgment for the sum or sums justly due him, provided, however, that any person having direct contractual relationship with a subcontractor, but no contractual relationship, express or implied, with the contractor furnishing such payment bond shall have a right of action upon and payment bond upon giving written notice to said contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed, and the name of the payor to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business or his residence, or in any manner in which the service of process in civil process is authorised by law.

B. Claimant in such suit shall notify the obligee named in the bond of the beginning of such action, stating the amount claimed, and no judgment shall be entered in such action without the obligee having first given such notice. The obligee and any person, firm, corporation or the state having a cause of action on such bond may be admitted as a party to such action, and the court shall determine the rights of all parties thereto. If the amount realized on such bond is insufficient to discharge all debts in full, such amount shall be distributed among the parties entitled thereto pro rata.

C. Receipt for suits by the state with respect to taxes, which shall be brought in the name of the bureau of revenue [labelled], every suit instituted under this section shall be brought in the name of the state of New Mexico for the use of the proper taxing district in any judicial district in which the contract was to be performed and executed, or where the claimant resides, but no suit, including one brought by the bureau of revenue, shall be commenced after the expiration of one year after the date of final settlement of such contract. The date of final settlement herein shall be that date on which the obligee in the final closing of the account with the contractor, of any due and unpaid. The state of New Mexico shall not be liable for the payment of any costs or expenses of any such suit.

D. The obligee named in such bond is authorized and directed to institute to any person, firm or corporation making application therefor who submits an affidavit that he or it has supplied labor or materials for such work and payment thereof has not been made or that he or it is being used on any such bond, or, to the payment of revenue [labelled], a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution and delivery of the original, and, in case final settlement of such contract has been made, a certified statement of
the date of such settlement which shall be conclusive as to such demand upon it. Applicants shall pay for such certified copies and certified statements at fees as the city clerk fixes to cover the cost of preparation thereof.

History: Laws 1929, ch. 276, § 26; C.S. 1929, § 1779; 1941 Comp. § 8-712; Laws 1963, ch. 46, h. 5; 1963 Comp., ch. 46-713; Laws 1965, ch. 251, § 2.

Compensation. — The bureau of records, re-

ferred to in Subsections C and D, was established, and its jurisdiction, powers and duties were transferred to the record division of the taxation and revenue de-

partment. See Laws 1927, ch. 249, §§ 4 and 5. How-

ever, since 1968, ch. 20, § 312, repealed § 4-11-4 NMRA 1968 to delete reference to the record division in the taxation and revenue department. See 9-11-4 NMRA 1978.

ANNOTATIONS

I. GENERAL CONSIDERATION;
II. PERSONS AND ENTITIES PROTECTED;
III. NOTICE;
IV. AMOUNTS RECOVERABLE;
V. GENERAL CONSIDERATION.

Legislative intent. — If no relief is available un-

der this section, the legislature has declared that the

right of liens' exist entitles the supplier to a lien on the material delivered to the public contracts and to recover from the owner of the public contracts the material delivered. Rees v. American Nat. Indem. Co., 120 N.M. 273, 217 P.2d 663 (1950).

Section 48-6-16, NMSA 1978 appears to be a meritorious construction project. The


Statutory remedy applicable to municipal liens. — Sections 10-4-18 and 15-4-17,

NMSA 1978 are intended to provide a remedy com-

patible with the necessity to control liens who provide


Failure to prove or establish. — Evidence may be presented, if the

plaintiff's right to a lien shall not be sufficient to

prove or establish the lien in its entirety.

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null
13-4-20. Additional bond in case of insolvency of sureties.

Whenever in the judgment any surety on such bond shall be insolvent, or for any cause is not a proper or sufficient surety, the obligee may require the contractor to furnish a new or additional bond or security within ten days; and thereupon, if the obligee shall so order, all work on said contract shall cease until such new or additional bond or security shall be furnished. If not furnished within said time, the obligee may at his option take over and complete said work as the agent and at the expense of the contractor and sureties, either doing the work on force account or letting the same by contract, and shall be entitled to use any equipment, materials and supplies of the delinquent contractor in completing said work.

History: Laws 1925, ch. 158, § 8; 1929, § 17-220; 1941 Comp., § 6-513; 1963 Comp., § 6-6-13.

ANNOTATIONS


13-4-21. [Public contracts with nonresident persons or partnerships or unadmitted foreign corporations; agent for service of process.]

That all contracts entered into by the state of New Mexico, any political subdivision of the state of New Mexico or any institution or department of the state of New Mexico, with any person or partnership not a resident of the state of New Mexico, or with any foreign corporation not authorized to do business in the state of New Mexico, for the furnishing of any materials or supplies or for the performance of any public work within the state of New Mexico by such nonresident person, partnership or foreign corporation not authorized to do business in the state of New Mexico, shall contain a specific provision designating an agent of such person, partnership or corporation, resident within the state of New Mexico, with his residence and post-office address, upon whom process and writs in any action or proceeding against any such nonresident person, partnership or corporation may be served in any action arising out of such contract to the same effect as though such person, partnership or corporation were actually and personally served within the state of New Mexico.

History: Laws 1907, ch. 144, § 1; 1961 Comp., § 6-513; 1983 Comp., § 6-6-14.

ANNOTATIONS

Low reviews. — For article, "Attachment in New Mexico - Part I," see 1 N.M. Resources 303 (1961).

13-4-22. [Secretary of state as agent for service.]

In the event any such contract shall not contain the provision above set forth in Section 1 (13-4-21 NMSA 1978) of this act, or in the event the agent so designated in such contract shall die or remove from the state of New Mexico, then and in such event, the nonresident person, partnership or foreign corporation, as the case may be, by entering into said contract shall be deemed to have named the secretary of the state of New Mexico, and his successor in office, as the true and lawful agent of such person, partnership or corporation upon whom such legal process or writ may be served in any action arising out of such contract, and when service is made upon the secretary of state in the manner hereinafter provided, such service shall have the same force and effect as though personal service had been made upon such person, partnership or corporation within the state of New Mexico.
13-4-23. [Service where there is no designated agent.]

The manner of recording and serving process in any action brought pursuant to the provisions of this act (13-4-51 to 13-4-42 NMSA 1978) when there has been, either, no designation of an agent in any such public contract, or where the agent named in such contract has died or removed from the state so that service cannot be had upon such agent, shall be as follows, to wit: the plaintiff, at the time of filing his complaint shall allege and set forth in his complaint or to an affidavit, to the satisfaction of the judge of the court having jurisdiction, that the defendant is one of the persons, partnerships or corporations contemplated in Section 1 (13-4-21 NMSA 1978) of this act, with the residence of said defendant, its name, and the further fact that said defendant has no designated agent within the state.

Upon such showing being made, the judge shall make an order directing that service of process be made upon the defendant by delivering two copies of the process and of the complaint and of said order to the secretary of the state of New Mexico, with instructions and directions to the secretary of the state to forward one copy of said summons, complaint or other process, together with a copy of such order of the court to said defendant by registered mail to the address shown in the complaint or affidavit, as the case may be, and that in addition to making service upon the secretary of the state, the copy of the court shall also direct that a copy of the process, together with a copy of the complaint and of said order accompanied by a notice that the same has been served upon the secretary of the state, pursuant to this act, be delivered to the defendant without the state. Proof of such service shall be made by affidavit filed in said action, and service shall be deemed complete thirty days from the date such personal service is made on the defendant.

History: Laws 1937, ch. 144, § 4; 1941 Comp., § 6-4-17; 1955 Comp., § 6-4-16.

ANNOTATIONS

Law reviews. — For article, "Attachment in New Mexico—Part II," see 1 N.M. Business 2 (1981).

13-4-24. [Continuances.]

The court in which any such action is pending shall, upon affidavit submitted upon behalf of the defendant, grant such additional time to answer, or continuance, as shall be reasonably necessary to allow the defendant full opportunity to plead and prepare for the trial of said action.

History: Laws 1937, ch. 144, § 4; 1941 Comp., § 6-4-18; 1955 Comp., § 6-4-17.

13-4-25. 13-4-26. Repealed.

Repealed. — Laws 1984, ch. 66, § 170, repealed 13-4-25 and 13-4-26 NMSA 1978, as amended by Laws 1985, ch. 201, §§ 28, 30, relating to architectural con-

13-4-27 to 13-4-30. Repealed.


13-4-31. Short title.

Sections 1 through 13 (13-4-31 to 13-4-42 NMSA 1978) of this act may be cited as the "Subcontractors Fair Practices Act."

History: Laws 1968, ch. 10, § 3.

Meaning of "this act." — The term "this act" refers to Laws 1968, Chapter 10, §§ 1 to 12 of which appears as 13-4-31 to 13-4-42 NMSA 1978. Section 13 of Laws 1968, Chapter 10 appears as 13-4-43 NMSA 1978.
13-4-32. Legislative findings.

The legislature finds that the practice of bid shopping and bid padding in connection with the construction, alteration and repair of public works projects often results in poor quality of material and workmanship to the detriment of the public, deprives the public of the full benefits of fair competition among contractors and subcontractors and lead to inaccuracies and loss of wages to employees.


13-4-33. Definitions.

As used in the Subcontractors Fair Practices Act (13-4-31 to 13-4-45 NMSA 1978):

A. "contractor" means the prime contractor on a public works construction project who contracts directly with the using agency;
B. "subcontractor" means a contractor who contracts directly with the contractor;
C. "project threshold" means the dollar amount, stipulated in the bidding documents, above which subcontractors must be listed;
D. "notice" means information, advice or a written warning intended to apprise a subcontractor, subcontractor or using agency of some proceeding in which the contractor, subcontractor's or using agency's interests are involved or to inform him of some fact that is his right to know. Notice may be sent to a contractor, subcontractor or using agency by certified or registered mail and shall be deemed to be completed upon date of mailing; and
E. "using agency" means any state agency or local public body requiring services or construction.

History: Laws 1988, ch. 18, § 3; 1999, ch. 82, § 2.
The 1995 amendment, effective June 16, 1995, in Subsection D, substituted "subcontractor or using agency" for "bid", and substituted "that" for "which".

13-4-34. Listing of subcontractors: requirements.

A. Any using agency taking bids for any public works construction project shall provide in the bidding documents prepared for that project a listing threshold which shall be five thousand dollars ($5,000) or one-half of one percent of the architect's or engineer's estimate of the total project cost, whichever is greater. If the bidding documents do not include a listing threshold, then the using agency shall supply the listing threshold. If the listing threshold has not been included, the bid opening shall be postponed until the using agency has complied with this section. Any contractor or subcontractor interested in listing may apply to the district court in the county in which the project will be located for an injunction preventing the bid opening until the using agency has complied with this section. Any person submitting a bid shall in his bid set forth:

1. the name and the city or county of the place of business of each subcontractor under subcontract to the contractor who will perform work or labor or render service to the contractor in or about the construction of the public works construction project in an amount in excess of the listing threshold; and
2. the category of the work that will be done by each subcontractor. The contractor shall list only one subcontractor for each category as defined by the contractor in his bid.
B. A bid submitted by a contractor who fails to comply with the provisions of Subsection A of this section is a nonresponsive bid which shall not be accepted by the using agency.

The 1995 amendment, effective June 16, 1995, in Subsection A, inserted "not including alternates", added the second through fourth sentences, substituted in Paragraph A(1) "the city or county" for "location"; and in Paragraph A(2) substituted "category" for "nature" and "that" for "which"; and in Subsection B, substituted "a contractor who" for "any person which".

ANNOTATIONS

Separate categories of work in one bid request. — Although there was only one invitation for bids, since it required two distinct bids creating a single bid let and a combination of that bid let with another, the contractor should have listed the subcontractor who would perform each category of work. Eyring, Inc. v. D & S Contracting, 120 N.M. 179, 899 P.2d 613 (Ct. App. 1995).

Written contract not required for listing as subcontractor. — The absence of a written contract

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between a general contractor and subcontractor at the time the general contractor submitted its bid did not mean that the general contractor was not obligated to list the subcontractor in the bid. Romero

13-4-35. Exemption.

With the exception of that portion of work covering street lighting and traffic signals, the Subcontractors Fair Practice Act (13-4-3 to 13-4-42 NMSA 1978) shall not apply to contracts for the construction, improvement or repair of streets or highways, including bridges, underground utilities within easements including but not limited to water lines, sewer lines and storm sewer lines.

History: Laws 1988, ch. 18, § 5.

13-4-35.1. Application of act.

The Subcontractors Fair Practice Act (13-4-3 to 13-4-42 NMSA 1978) shall not apply to any transaction occurring after the contractor and the listed subcontractor have executed a subcontract unless subsequent action on the subcontract relates to subcontractor listing requirements.


13-4-36. Substitution of subcontractor.

A. No contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except that the using agency shall consent to the substitution of another person as a subcontractor in the following circumstances:

1. when the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project involved and the terms of such subcontractor’s written bid, is presented to him by the contractor;

2. when the subcontractor listed in the original bid becomes bankrupt or insolvent prior to execution of a subcontract;

3. when the using agency refuses to approve the subcontractor listed in the original bid, provided such approval has been reserved in the bidding documents;

4. when the subcontractor listed in the original bid fails or refuses to perform his subcontract;

5. when the subcontractor demonstrates to the using agency or its duly authorized officer that the terms of the subcontractor was listed as the result of an inadvertent clerical error;

6. when a bid alternate accepted by the using agency causes the listed subcontractor’s bid not to be low;

7. when the contractor can substantiate to the using agency that a listed subcontractor’s bid is incomplete;

8. when the listed subcontractor fails to “refuse to meet the bond requirements of the contractor;

9. when it is determined that the listed subcontractor does not have a proper license to perform the work and the contractor has submitted the name of the subcontractor along with proof that the subcontractor bid work for which he was not licensed by the construction industries division of the regulation and licensing department;

10. when it is determined by the using agency, the prime contractor or the director of the health and industrial division of the labor department that a listed subcontractor is not a registered subcontractor on the date bids are unconditionally accepted for consideration.

B. Prior to approval of the contractor’s request for substitution of a subcontractor, the using agency shall give notice in writing to the listed subcontractor of the contractor’s request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the using agency. Failure to file written objections shall constitute the listed subcontractor’s consent to the substitution. If written objections are filed, the using agency shall give at least five working days notice in writing to the listed subcontractor of a hearing by the using agency on the contractor’s request for substitution.

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C. No contractor whose bid is accepted shall permit any subcontractor to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid without the consent of the using agency.

D. No contractor whose bid is accepted, other than in the performance of changes ordered causing changes or deviations from the original contract, shall submit or subcontract any portion of the work in excess of the listing threshold as to which the original bid did not designate a subcontractor unless:

(1) the contractor fails to receive a bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall designate on the listing form that no bid was received for the category of work.

(2) the subcontractor fails to receive more than one bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall designate on the listing form that only one subcontractor's bid was received, together with the name of the subcontractor. This designation shall not count as one time on the subcontractor list.

ANNOTATIONS
Bid information—The proceeds of subparagraph (Paraphrase A), concerning exemptions of a "bid ab- sentee" by the using agency, did not apply to allow substitutions of a listed contractor when the invitation for bids expressed no distinction between receiving a single bid and a combination of bids from another and the subcontractor was required to list the subcontractor who would perform each category of work. Dibiasio, Inc. v. U.S. Contracting, 119 N.M. 775, 880 P.2d 612 (Ct. App. 1994).

Contractor would not substitute itself as subcontractor—Without proper approval by the using agency, a principal contractor could not substitute itself for a listed contractor after the using agency had accepted the general contractor's list. Boeing Engineer- ing & Construction, Inc. v. Bradley Gypsum, Inc., 1988 NMS01-019, 524 N.M. 471, 933 P.2d 459.

13-4-37. Bond requirements.

A. It is the responsibility of each subcontractor submitting a bid to a contractor to be prepared to submit a faithful performance and payment bond as requested by the contractor.

B. In the event any subcontractor submitting a bid to a contractor does not, upon the request of the contractor and at the expense of the contractor at its established charge of premium therefor, furnish or demonstrate a bond issued by a corporate surety authorized to do business in New Mexico in accordance with the New Mexico Insurance Code (Chapter 19A NMSA 1978) and listed in the United States treasury department circular 570 wherein the contractor is named as obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the contractor may reject the bid and make a substitution of another subcontractor subject to the provisions of Section 13-4-36 NMSA 1978. Such bond may be required at the expense of the subcontractor only if the contractor in his written or published request for subcontract bids:

(1) specifies that the expense for the bond shall be borne by the subcontractor; and

(2) clearly states the amount and requirements of the bond.

ANNOTATIONS
Am. Jur. 2d, Suretyship, § 186, and C.J.S., references. — State or local government's liability to subcontractors, workers, or materialsmen for failure to procure, contractor to post bond, 14(A), 2d, 564-69.

13-4-38. Failure to specify subcontractor.

If a contractor fails to list a subcontractor in excess of the listing threshold and he does not state that no bid was received or that only one bid was received, he represents that he is fully qualified to
perform that portion of the work himself and that he shall perform that portion of the work himself. If after the award of the contract the contractor subcontracts any portion of the work, except as provided in the New Mexico Fair Practices Act (13-4-31 to 13-4-42 NMSA 1978), the contractor shall be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided in Section 13-4-41 NMSA 1978.


The 1989 amendment, effective June 10, 1989, in the first sentence, substituted "and" for "or" after "is refused" in the third sentence. In the third sentence, inserted "in" after "the" in the third sentence and inserted "or" after "the" in the third sentence and then made miscellaneous changes throughout the section.

13-4-39. Inadvertent clerical error.

A. The contractor, as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor, shall, within four working days after the time of the prime bid opening by the using agency, give written notice to the using agency and to both the subcontractor he claims to have listed in error and the subcontractor who had led to the contractor prior to bid opening.

B. Any listed subcontractor who has been notified by the contractor in accordance with the provisions of this section as to an inadvertent clerical error shall be allowed twelve working days from the time of the prime bid opening within which to submit to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file written notice within the twelve working days shall be primary evidence of his agreement that an inadvertent clerical error was made.

C. The using agency shall, in the absence of an objection to the contrary by the listed subcontractor in the original bid, consent to the substitution of the intended subcontractor if:

1. the contractor, the listed subcontractor listed in error and the intended subcontractor each submit an affidavit to the using agency, along with such additional evidence as the parties may wish to submit, that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within twelve working days from the time of the prime bid opening, or
2. affidavits are filed by both the contractor and the intended subcontractor within the specified time, but the subcontractor when the contractor claims to have listed in error does not submit, within twelve working days from the time of prime bid opening, to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error as provided in this section.

D. If affidavits are filed by both the contractor and the intended subcontractor but the listed subcontractor has, within twelve working days from the time of the prime bid opening, submitted to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error, the using agency shall investigate the claims of the parties and hold a hearing to determine the validity of the claims, within thirty days after the receipt of the contractor's written objection. Any determination made shall be based on facts contained in the affidavits submitted by all three parties and supported by testimony under oath and subject to cross-examination. The using agency may, on its motion or that of any other party, admit testimony of other contractors, any bid irregularities or depositions or any other party in possession of facts that may have a bearing on the decision of the using agency.


The 1989 amendment, effective June 10, 1989, in Subsection A, substituted "and" for "or" in Subsection 2, substituted "same" for "the" in Subsection 2, substituted "same" for "the" in Subsection 2, in Paragraph C inserted "listed" preceding the first "subcontractor" and substituted "awarded" for "right" in Paragraph C. Substituted "substitute" for "substituted" in Section 2, inserted "without" after "the" in Paragraph C, inserted "or" after "the" in Paragraph C, and made miscellaneous changes throughout the section.

13-4-40. Emergency subcontracting.

Subcontracting any portion of the work in excess of the listing threshold as to which no subcontractor was designated in the original bid shall be permitted only in the case of public emergency or necessity and then only upon a written finding by the using agency setting forth the facts constituting the emergency or necessity.
13-4-41. Penalties.

A. When a contractor violates any provision of the Subcontractors Fair Practices Act (13-4-31 to 13-4-42 NMSA 1978), the aggrieved subcontractor shall:
(1) In the case of a contractor who substitutes another subcontractor in violation of Section 13-4-38 NMSA 1978, for the subcontractor originally included in the bid, assess the contractor a penalty in an amount equal to the greater of ten percent of the amount bid by the listed subcontractor or the amount bid by the substituted subcontractor;
(2) In the case of a contractor substituting a listed subcontractor for another subcontractor, and the substituted subcontractor knowingly participated in a violation of Section 13-4-38 NMSA 1978, assess the substituted subcontractor a penalty in an amount equal to the greater of ten percent of the amount bid by the listed subcontractor and the difference between the amount bid by the listed subcontractor and the substituted subcontractor; or
(3) In the case of a contractor who fails to list a subcontractor in excess of the listing threshold, as defined in Section 13-4-38 NMSA 1978, assess the contractor a penalty of nine percent of the amount of the subcontract issued for the first violation and thirty percent of the amount of the subcontract issued for any violation thereafter, on any one project.

B. Penalties assessed pursuant to the provisions of this section shall be deposited into the fund from which the contract was awarded.

C. In a proceeding under this section, the contractor shall be entitled to a hearing after notice.

D. A violation of the provisions of the Subcontractors Fair Practices Act constitutes grounds for disciplinary action against a contractor or a subcontractor, pursuant to regulations of the construction industries division of the regulation and licensing department.

E. A contractor or a subcontractor who attempts to circumvent the provisions of the Subcontractors Fair Practices Act shall be subject to the penalties established pursuant to this section.

F. Any listed subcontractor required in violation of the Subcontractors Fair Practices Act may bring an action in the district court for damages, injunctive or other relief.

13-4-42. Coverage of home rule municipalities.

Any home rule municipality or II class county chartered under the provisions of Article 19, Section 6 of the constitution of New Mexico is expressly denied authority to legislate regulations of the subject matter of the Subcontractors Fair Practices Act (13-4-31 to 13-4-42 NMSA 1978) that conflicts with the provisions of that act.

13-4-43. Dispute resolution.

Once the aggrieved party has determined the existence of a valid claim under the provisions of the Subcontractors Fair Practices Act (13-4-31 to 13-4-42 NMSA 1978), the aggrieved party or agent of the aggrieved party may:
A. Hold a public hearing for the purpose of proving an informal resolution of the dispute by preparing a "form of dispute" which shall be available to all parties. The form shall state, in numbered paragraphs, the matter at issue or dispute which the complainant expects to be determined.
B. The agent or the aggrieved party shall evaluate the issues presented by both sides of the dispute and render a decision within ten days of the hearing, and provide the parties with a written copy of the decision by certified mail, return receipt requested; or
C. Refer the matter in dispute to be resolved through arbitration.
ART IN PUBLIC PLACES

History: Laws 1978, ch. 18, § 12.


This act [13-4A-1 to 13-4A-11 NMSA 1978] may be cited as the "Art in Public Places Act".

History: Laws 1986, ch. 11, § 1.

13-4A-2. Legislative declaration.

The legislature declares it to be a policy of the state that a portion of appropriations for capital expenditures be set aside for the acquisition or commissioning of works of art to be used in, upon or around public buildings.

History: Laws 1986, ch. 11, § 2.


As used in the Art in Public Places Act:
A. "agency" means all state departments and agencies, boards, councils, institutions, commissions and quasi-public corporations, including all state educational institutions enumerated in Article 12, Section 1 of the constitution of New Mexico, and all statutorily created post-secondary educational institutions;
B. "architect" means the person or firm designing the project for the contracting agency to which the one percent provision pursuant to Section 13-4A-4 NMSA 1978 applies;
C. "contracting agency" means the agency having the control, management and power to enter into contracts for new construction or renovation of any public building;
D. "division" means the arts division of the office of cultural affairs;
E. "public buildings" means those buildings under the control and management of the property control division of the general services department, the department of game and fish, the energy, minerals and natural resources department, the state highway and transportation department, the state fair commission, the supreme court, the commissioner of public lands, the office of cultural affairs, the governing boards of the state educational institutions and statutorily created post-secondary educational institutions, the state department of public education and the legislature or any buildings constructed with funds appropriated by the legislature. For the purposes of the Art in Public Places Act, "public buildings" does not include such auxiliary buildings as maintenance plants, correctional facilities, warehouses or temporary structures; and
F. "work of art" means any work of visual art, including but not limited to a drawing, painting, mural, fresco, sculpture, mosaic or photograph; a work of calligraphy; a work of graphic art, including an etching, lithograph, offset print, silk screen or a work of graphic art of like nature; works in clay, textile, fiber, wood, metal, plastic, glass and like materials; or mixed media, including a collage or assemblage or any combination of the foregoing art media which is chosen to be included in or immediately adjoining the building under consideration. Under special circumstances, the term may include environmental landscaping if approved by the division.

The works of art acquired pursuant to the Act in Public Places Act may be an integral part of the building, attached to the building, detached within or outside the structure or placed on public lands, part of a temporary exhibition or leased or exhibited by the agency in other public facilities.

History: Laws 1986, ch. 11, § 6, which was to repeal this article effective January 1, 1990, was repealed by Laws 1989, ch. 178, § 2.

13-4A-7. Administration of the program.

The division shall determine the amount to be made available for the purchase of art, in consultation with the contracting agency responsible for the building to be constructed or renovated, and payments thereof shall be made in accordance with law. All agencies shall notify the division in writing upon legislative approval of construction budgets. One percent of the total appropriation for new construction or renovation of any building shall be deposited into the art in public places fund after the issuance of the appropriate bonds. If the entire one percent of the total funds appropriated for a particular building is not required for the project, the remainder shall accumulate in the art in public places fund and shall be accounted for separately and expended for the acquisition of art for existing buildings, as determined by the division. Any money remaining in the fund at the end of each fiscal year shall not revert but shall remain in the art in public places fund to be used to implement the purposes of the Art in Public Places Act.

History: Laws 1986, ch. 11, § 7, which was to repeal this article effective January 1, 1990, was repealed by Laws 1989, ch. 178, § 2.

The division shall establish guidelines for the art selection process. This process shall provide for participation from representatives of the contracting agency, the user agency, the division, the project architect, visual artists or design professionals and interested members of the community.


Compiler's notes.—Laws 1986, ch. 31, § 13, which was to repeal this article effective January 1, 1980, was repealed by Laws 1989, ch. 179, § 1.


Expenditures for works of art as provided in Section 7 [13-4A-7 NMSA 1978] of the Art in Public Places Act shall be contracted for separately from all other items in the new construction of the public building.


Compiler's notes.—Laws 1986, ch. 31, § 13, which was to repeal this article effective January 1, 1980, was repealed by Laws 1989, ch. 178, § 2.

13-4A-10. Division; rules and regulations.

The selection, execution, placement and acceptance of works of art for a construction project shall be the responsibility of the division in consultation with the contracting agency. The division shall adopt rules and regulations to govern the selection, execution, placement and acceptance of the works of art to be acquired in accordance with this section and other rules, regulations and procedures necessary to implement the Art in Public Places Act. Administrative costs incurred by the division for the implementation of the Act in Public Places Act may be charged against the art in public places fund, provided that such costs have been properly budgeted and the budget has been approved by the state cultural affairs officer and the secretary of finance and administration.


Compiler's notes.—Laws 1986, ch. 31, § 13, which was to repeal this article effective January 1, 1980, was repealed by Laws 1989, ch. 178, § 2.


The contracting agency or its designee is responsible for inventory, maintenance, repair and security of art work. Any maintenance or repair work shall be done in consultation with the division.


Compiler's notes.—Laws 1986, ch. 31, § 13, which was to repeal this article effective January 1, 1980, was repealed by L. 1989, ch. 178, § 2.

ARTICLE 4B

Fine Art in Public Buildings

See: 13-4B-1. Findings.
13-4B-2 Definitions.

13-4B-3. Fine art; alteration or destruction prohibited; injunctive relief; damages; exceptions.

13-4B-1. Findings.

The legislature finds that the physical alteration or destruction of fine art, which is an expression of the personality of the artist, is detrimental to the reputation of the artist and artists therefore have an interest in protecting their works of fine art against such alteration or destruction. The legislature also finds that there is a public interest in preserving the integrity of cultural and artistic creations.

History: Laws 1987, ch. 70, § 1.
13-4B-2 Definitions.

As used in this act (13-4B-1 to 13-4B-3 NMSA 1978):

A. "artist" means the natural persons who actually create a work of fine art but does not include art created by an employee within the scope of his employment. In case of a joint creation of a work of art, each joint creator shall have the rights of an artist with respect to the work of fine art as a whole.

B. "fine art" means any original work of visual or graphic art of any medium including any painting, print, drawing, sculpture, craft, object, photograph, audio or video tape, film, hologram or any combination of such media of recognized quality.

C. "gross negligence" means the exercise of no slight degree of care as to justify the belief that there was indifference to the particular work of fine art.

D. "public building" means a building owned by the state or any of its branches, agencies, departments, boards, instrumentalities or institutions or a building owned by any political subdivision of the state or any of its agencies, instrumentalities or institutions; and

E. "public view" means on the exterior of a public building or an interior area of a public building.

History: Laws 1987, ch. 76, § 2.

13-4B-3 Fine art; alteration or destruction prohibited; injunctive relief; damages; exceptions.

A. No person except an artist who owns or possesses a work of fine art which the artist has created shall intentionally conceal or authorize the intentional commission of any physical destruction, mutilation, alteration or destruction of a work of fine art in public view. As used in this section, "intentional physical destruction, mutilation, alteration, or destruction" includes any act which takes deliberately or through gross negligence.

B. The artist shall retain the right to claim and receive credit under his own name or under a reasonable pseudonym or, for just and valid reason, to disclose authorship of his work of fine art. Credit shall be determined in accord with the medium of expression and the nature and extent of the contribution of the artist to the work of fine art.

C. The artist or any party being sued or other artists' organizations authorized in writing by the artist for such purpose may enjoin an action in district court without having as prerequisites to a suit any need for:

1. Damages already incurred;
2. A showing of special damages, if any, or
3. General damages in any monetary amount to recover or obtain any of the following:
   a. Injunctive relief or declaratory relief;
   b. Actual damages;
   c. Reasonable attorney and expert witness fees and all other costs of the action; or
   d. Any other relief which the court deems proper.

D. In determining whether a work of fine art is of recognized quality, the court shall rely on the opinion of artists, art dealers, collectors of fine art, curators of art museums, restorers and conservators of fine art and other persons involved with the creation or marketing of fine art.

E. The provisions of this section shall, with respect to the artist, or if any artist is deceased, his heirs, assigns, or personal representatives, continue until the thirtieth anniversary of the death of such artist, and continue in addition to any other rights and duties which may now or in the future be applicable and, except as provided in subsection F of this section, may not be waived except by an instrument in writing expressly providing which is signed by the artist and refers to specific works with identification and such waiver shall only apply to work so identified.

The attorney general may, on the request of the artist, on the artist's behalf and commence an action for injunctive relief with respect to any work of art which is in public view.

F. If a work of fine art in public view cannot be removed from a building without substantial physical destruction, mutilation, alteration, or destruction of such work, the rights and duties created under this section, unless expressly reserved by an instrument in writing signed by the owner of such building.

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and properly recorded prior to the installation of such art, shall be deemed waived. Such instrument, if recorded, shall be binding upon subsequent owners of such building.

G. If the owner of a building wishes to remove a work of fine art which is a part of that building but which can be removed from the building without substantial harm to such fine art, he rights and duties created under this section shall apply unless the owner has diligently stepped without reason to notify the artist or, if the artist is deceased, his heir, legatee or personal representative in writing of his intended action affecting the work of fine art, so unless he did provide notice and that person failed within ninety days either to remove the work or to pay for its removal. If such work is removed at the expense of the artist, his heir, legatee or personal representative, title to the fine art shall be deemed to be in such person.

History: Laws 1967, ch. 70, § 2.

ARTICLE 4C
Public Works Mediation

Sec. 13-4C-1. Short title. Sec. 13-4C-7. Written materials.
13-4C-3. Application. 13-4C-10. Records of agreement; compromise and offer to compromise.
13-4C-4. Notice of mediation session; service of notice. 13-4C-10. Mediation clauses in a contract; application of federal law.
13-4C-5. Location of mediation session. 13-4C-11. Costs.

Chapter 13, Article 4C NMSA 1978 may be cited as the "Public Works Mediation Act."


13-4C-2. Definitions.
As used in the Public Works Mediation Act:
A. "Interested person" means a person with an association to a dispute related to the performance of a public works project, when that association arises out of the same transaction or occurrence underlying the dispute.
B. "Mediator" means an individual or organization, independent of a dispute related to the performance of a public works project, that acts to assist persons in the resolution of the dispute;
C. "Project" means the state, political subdivision of the state, including any home rule municipality chartered pursuant to the provisions of Article 10, Section 6 of the constitution of New Mexico, institution or department of the state, local public body, contractor, subcontractor, supplier, architect, engineer or project manager, and
D. "Public works project" means a project of the state, including highway projects of the state highway and transportation department, a project of a political subdivision of the state, including any home rule municipality chartered pursuant to the provisions of Article 10, Section 6 of the constitution of New Mexico, a project of an institution or department of the state or a project of a local public body to construct, repair, alter, demolish, install or extend any improvement on real property or to improve the property owned, used or leased by the state, political subdivision of the state, an institution or department of the state or a local public body.


13-4C-3. Application.
The Public Works Mediation Act applies to all disputes related to the performance of a public work project.

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13-4C-4. Mediation requirements; exemptions.

A. Except as provided in Subsections B, C and D of this section, a person who seeks to resolve a dispute related to the performance of a public works project shall exhaust the mediation procedures set forth in the Public Works Mediation Act before seeking judicial relief in a court of law.

B. A dispute that arises under an arbitration clause of a contract for a public works project that includes a clause in the contract that requires arbitration is exempt from the provisions of the Public Works Mediation Act.

C. The provisions of the Public Works Mediation Act shall not apply to:

1. any disputes between employers and employees, including disputes arising pursuant to the provisions of the Public Works Minimum Wage Act (23-4-10 to 23-4-17 NMSA 1978) or the Workers’ Compensation Act (Chapter 22, Article 1 NMSA 1978); or
2. any disputes regarding an apprenticeship, including disputes arising pursuant to the provisions of Sections 50-5-1 through 50-5-7 NMSA 1978.

D. All contractual alternative dispute resolution remedies shall be exhausted prior to application of the provisions of the Public Works Mediation Act.


13-4C-5. Notice of mediation session; service of notice.

A. An interested person may convene a mediation session for the purpose of resolving disputes related to the performance of a public works project. Mediation of a dispute related to the performance of a public works project shall take place within thirty days after an interested person has provided notice of the mediation session to other interested persons.

B. When an interested person receives notice of a mediation session, that person may notify other interested persons of the mediation session. A person who receives notice of a mediation session shall provide notice:

1. to other interested persons no later than five days following receipt of the original notice; and
2. that other interested persons have been notified to the interested person was convened the mediation session no later than five days following receipt of the original notice.

C. An interested person providing notice of a mediation session shall include the following information within the notice:

1. the name and mailing address of the mediator;
2. the date, time and location of the mediation session;
3. a brief summary of all issues concerning a dispute related to the performance of a public works project;
4. a brief statement regarding an interested person’s association with a dispute related to the performance of a public works project, when the interested person has been provided with notice of a mediation session; and
5. the cost for an eight-hour mediation session and the responsibility for payment of the costs pursuant to the provisions of Section 13-4C-13 NMSA 1978.

D. Service of the notice required pursuant to the provisions of Subsection C of this section shall be made by:

1. mailing a certified letter, return receipt requested, to an interested person’s residence, principal office or place of business; or
2. delivering a copy of the notice to interested persons.


13-4C-6. Location of mediation session.

The mediation session shall be conducted at a neutral site that affords no advantage to any person attending the mediation session. The mediation session shall be held in the county where the public
A. The mediator shall have the authority to enter into a settlement of disputes related to the performance of a public works project. A person may be accompanied by an attorney during the mediation session.

History: 1976, ch. 46, § 8.

13-4C-9. Recording of agreements; compromise and offers to compromise.

A. Following the completion of a mediation session, the mediator shall record any agreements entered into by persons during the session. Agreements shall be recorded in writing or by an audio or video tape recording; provided that all persons entering into the agreement shall indicate their assent to the agreement.

B. Evidence of offers to compromise a dispute or disclosures made during a mediation session shall not be admissible in subsequent judicial proceedings.


13-4C-10. Mediation clause in a contract; application of federal law.

A. When persons include a mediation clause in a contract for performance of a public works project, the provisions of the mediation clause shall not conflict with the provisions of the Public Works Mediation Act. Any language in a mediation clause that conflicts with the provisions of the Public Works Mediation Act shall be unenforceable at law.

B. When a public works project involves the expenditure of federal funds, the mediation process shall be conducted in accordance with any applicable federal law or regulations. When any applicable federal law or regulations are inconsistent with the provisions of the Public Works Mediation Act, compliance with federal law or regulations shall constitute compliance with the Public Works Mediation Act.

History: 1976, ch. 46, § 10.
13-4C-11. Costs.

A. The costs of a mediation session shall be borne equally by all interested persons properly notified of a mediation session. When an interested person who has been properly notified of a mediation session fails to appear for that session or fails to remain for the duration of a session, that interested person shall be wholly responsible for the costs of the mediation session.

B. When a person files a lawsuit subsequent to exhausting the procedures set forth in the Public Works Mediation Act, the court may assess costs against any interested person who was properly notified of a mediation session and who failed to pay his share of the costs of the mediation session.

C. The mediator shall determine whether a person is an interested person for the purposes of sharing the costs of a mediation session.


ARTICLE 4D
Public Works Apprenticeship and Training

Sec. 13-4D-1. Short title.

Sec. 13-4D-2. Purpose.

Sec. 13-4D-3. Definitions.

Sec. 13-4D-4. Administration.

Sec. 13-4D-5. Notice to employer; publication of program.

Sec. 13-4D-6. Notice to employer; publication of program.

Sec. 13-4D-7. Noncompliance; penalties.

Sec. 13-4D-8. Appeals.

13-4D-1. Short title.

Chapter 13, Article 4D NMSA 1978 may be cited as the "Public Works Apprenticeship and Training Act".


Cross references. — For Apprenticeship Assistance Act, see 27-18A-1 NMSA 1978 et seq.

13-4D-2. Purpose.

The purpose of the Public Works Apprenticeship and Training Act is to ensure funding through contributions made by employers, to establish an apprenticeship program that will develop skilled building trades craft person in occupations recognized by the bureau of apprenticeship and training of the United States department of labor or the New Mexico apprenticeship council. The funding will ensure requisite training during economic downturns, increase the number of New Mexicans possessing skills that will enhance their opportunities for employment and maintain the high standards of craftsmanship in our state.

History: Laws 1992, ch. 74, § 3.


As used in the Public Works Apprenticeship and Training Act:

A. "approved apprenticeship and training programs" means building trades apprenticeship and training programs in New Mexico that are recognized by the bureau of apprenticeship and training of the United States department of labor or the New Mexico apprenticeship council;

B. "compliance statement" means a monthly record of an employer's contributions paid into an approved apprenticeship and training program in New Mexico or into any public works apprenticeship and training fund;

C. "director" or "division" means the labor relations division of the workforce solutions department; and

D. "employer" means a contractor, subcontractor or any person acting as a contractor on a public works project, as that term is defined in the provisions of the Construction Industries Licensing Act (Chapter 49, Article 13 NMRA 1978).
13-4D-4. Administration.

A. The Public Works Apprenticeship and Training Act shall be administered by the public works bureaus of the labor department. The bureau shall collect information about employers' contributions in accordance with this act, review employers' compliance statements, review certified payroll reports to verify training contributions, investigate allegations of and impose penalties for employer noncompliance and disburse funds as provided in Section 5 13-4D-5 NMSA 1978 of the Public Works Apprenticeship and Training Act.

B. Public works construction projects, except for street, highway, bridge, road, utility or maintenance contracts with employers who elect not to participate in training, shall not be constructed unless an employer agrees to make contributions to approved apprenticeship and training programs in New Mexico in which the employer is a participant or to the public works apprenticeship and training fund administered public works bureaus of the labor and industrial division of the labor department. Contributions shall be made in the same manner and in the same amount as apprenticeship and training contributions required pursuant to wage rate determinations made by the director.

C. The director shall adopt rules and regulations necessary to implement the provisions of the Public Works Apprenticeship and Training Act.


13-4D-5. Fund created; disbursement of funds.

There is created the "public works apprenticeship and training fund" in the labor and industrial division of the labor department. Contributions into the fund shall be as provided under the provisions of Section 13-4D-4 NMSA 1978. Funds contributed under the provisions of the Public Works Apprenticeship and Training Act shall be distributed in the following manner:

A. no more than fifteen percent of the funds may be used by the public works bureau of the labor and industrial division of the labor department to hire staff to administer the funds collected by the division; and

B. the remainder of the funds shall be used for approved apprenticeship and training programs in New Mexico. The labor and industrial division of the labor department shall develop an annual budget and, subject to appropriation by the legislature in the general appropriation act, shall disburse funds to approved apprenticeship and training programs in New Mexico, taking into account participant contact hours of classroom instruction and on-the-job training for the preceding year, to be not less than ninety percent of one hundred forty-four contact hours of classroom instruction per participant per school year and not less than nine thousand hours of on-the-job training per twelve-month period. Notwithstanding any language to the contrary in the general appropriation act, otherwise limit budget adjustments, if the fund balance available for disbursement to approved programs exceeds the amount appropriated, pursuant to Sections 6-3-05 through 6-3-22 NMSA 1978, the labor department may request budget increases up to the excess fund balance for disbursement to the programs.


The 2003 amendment, effective June 17, 2003, provided in subsection B that the disbursement of funds is subject to appropriation by the legislature in the general appropriation act and that the director determining the general appropriation act that limits budget adjustment, if the fund balance available for disbursement exceeds the amount appropriated to the labor department may request budget increases up to the excess fund balance for distribution.

13-4D-6. Notice to employers of publication of programs.

A. An employer's contribution requirements under the provisions of the Public Works Apprenticeship and Training Act shall be included with all minimum wage determinations issued by the labor and industrial division of the labor department on all public works construction projects. The director shall also provide the contribution rates for approved apprenticeship and training programs, and that information shall be part of the public works construction projects.

B. The labor and industrial division of the labor department shall publish a list of approved apprenticeship and training programs in New Mexico.

An employer who willfully and knowingly fails to comply with the requirements of the Public Works Apprentice and Training Act shall be subject to the following penalties:

A. A noncomplying employer shall pay a civil penalty of $10.00 for every calendar day of noncompliance, and the penalty shall be imposed and collected for deposit into the public works apprentice and training fund by the public works bureau of the labor and industrial division of the labor department;

B. A noncomplying employer shall have the unpaid contributions, as required under the provisions of the Public Works Apprentice and Training Act, withheld as provided in Subsection A and B of Section 13-6-14 NMSA 1978; and

C. A noncomplying employer shall not be permitted to bid on any public works contract as provided in Subsections A and B of Section 13-6-14 NMSA 1978.


An alleged noncomplying employer may appeal any of the penalties imposed upon him under the provisions of Section 7 of the Public Works Apprentice and Training Act by seeking an appeal as provided under the provisions of Section 13-6-15 NMSA 1978.

History: Laws 1996, ch. 74, § 7.

ARTICLE 5

Insurance on Public Buildings

13-5-1. State agency public property; insurance; reserve for losses of state agency; public property reserve fund created.

A. The risk management division of the general services department shall purchase a blanket insurance policy for public buildings of state agencies against loss or damage by fire, windstorm, hail, storm, explosion, riots or civil commotion. The risk management division may provide coverage to covered educational entities under the public property reserve fund through blanket or individual policies. The risk management division shall create a reserve for the uninsured value of any state public building and for the uninsured loss or damage to any such building by flood, subject to any deductible that the risk management advisory board determines shall be borne by individual state agencies or covered educational entities.

B. Subject to any deductible to be borne by individual state agencies or covered educational entities, the risk management division of the general services department may purchase insurance, establish reserves or provide a combination of insurance and reserves to cover, in any amount not to exceed replacement cost:

(1) buildings of state agencies or covered educational entities destroyed or damaged by any peril other than a peril set forth in Subsection A of this section;

(2) personal property that is destroyed or damaged by any peril; or

(3) personal property that is stolen.

C. Any insurance purchased pursuant to Subsections A and B of this section may be purchased with such deductibles and provisions as may be deemed advisable by the risk management advisory board.

D. The director of the risk management division of the general services department shall include in his annual report to the legislature an inventory of all public buildings insured by the division, th-
estimated total values of the buildings, the total insured values of the buildings and the amount of any deductible or maximum loss provisions in the current insurance policy covering the buildings.

2. There is created in the state treasury the "public property reserves fund." The fund shall consist of assessments of state agencies and covered educational institutions deposited in the fund, money appropriated to the fund, income earned by the fund and money received as proceeds of insurance purchased pursuant to this section. The fund may be used: (a) for the payment of public property reserves; (b) to pay any claim covered by a certificate of coverage issued by the director of the risk management division of the general services department; provided such claims shall only be paid to the extent of actual expenses that have been or will be incurred to repair, reconstruct and repair covered property; (c) to pay the cost of repair, reconstruction and replacement of property and expense incidental thereto arising from damage or destruction covered pursuant to this section; (d) enter into consulting and other contracts as may be necessary or desirable in carrying out the provisions of this section; and (e) pay costs and expenses incurred in carrying out the provisions of this section.

F. The director of the legislative council service may elect to review or all of any part of public buildings or property under his jurisdiction through the public property reserve fund by giving written notice of such election to the director of the risk management division of the general services department and paying assessments that the director of the risk management division prescribes.

G. For purposes of this section, "state agency" means the state or any of its branches, agencies, departments boards, instrumentalities or institutions.

II. For purposes of this section, "covered educational entities" means school districts as defined in Section 22-3-2 NMSA 1978 and educational institutions established pursuant to Chapter 21, Articles 13, 14 and 17 [repealed NMSA 1978] that request and are granted coverage from the risk management division of the general services department, if the coverage is commercially unavailable; except that coverage shall be provided to a school district only through the public school insurance authority or its successor unless the district has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which this division offers its coverage. A local school district to which the division may provide coverage may provide marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services.


Repeals and Reenactments. — Laws 1977, ch. 296, § 1, reenacted former 6-6-1, 1953 Comp., relating to insurance for public buildings, and enacted a new 6-6-1, 1977 Comp.


Bracketed material — The bracketed material was inserted by the compiler and is not part of the law.


Cross References. — For insurance of buildings having legislature, see 2-5-8 NMSA 1978.

For insurance of state literary building, see 2-5-7 NMSA 1978.

The 2000 amendment, effective March 6, 2000, added the last sentence in Subsection A, in Subsection B, added "establish/reserve or provide a combination of insurance and reserve to cover, in any amount not to exceed replacement cost," in lieu of the introductory language; deleted "cover, in any amount not to exceed replacement cost," from the beginning of Paragraph (1), and deleted "cover, in any amount not to exceed replacement cost," from any beginning of Paragraph (2) and (3), and deleted Subsection C, concerning claims cash balances in the public property reserve fund. The 1996 amendment, effective March 21, 1996, deleted the last sentence of subsection A which provided that the risk management division would create a reserve for uninsured value of public property inserted in "the general services department" in Subsections B, D, E, and F, deleted "establish/reserve or provide a combination of insurance and reserves," and by inserting "purchase insurance," in Subsection D, inserted "insurance covered by the fund," preceding "and money," in the second sentence of Subsection E, reversed Subsection F, and made several substantive for "which" throughout the section.

ANNOTATIONS


Availability of proceeds of insurance on public buildings: the purpose of either than restoring or replacing the building damaged or destroyed, 65 A.L.R. 1354.

Right of duty in carry insurance on public property, 100 A.L.R. 612.

BIA C.J.R. Status § 147.

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13-5-3. Public property; local public bodies; insurance; reserves; losses.

A. Local public bodies shall purchase insurance for public buildings under their control against loss or damage by fire, wind, water, hail, storm, explosion, riot or civil commotion in an amount not less than eighty percent of the replacement cost or actual cash value of the building.

B. Local public bodies may purchase insurance, establish reserves or provide a combination of insurance and reserves to:
   1. repair or replace their buildings if damaged by any peril other than a peril not covered in Subsection A of this section;
   2. repair or replace any personal property which is destroyed or damaged by any peril, or
   3. replace any personal property which is stolen.

C. Any insurance purchased pursuant to Subsections A and B of this section may be purchased with such deductibles provisions as may be deemed desirable.

D. For purposes of this section, "local public body" means all political subdivisions of the state and their agencies, instrumentalities and corporations.


13-5-3.1. Public buildings; compliance with the national flood insurance program.

A building that receives state appropriations for its construction or that is repaired or improved with state appropriations is an amount greater than fifty percent of the building's value before the repair or improvement shall comply with standards of the national flood insurance program and Section 5-18-7 NMSA 1978.

History: Laws 2003, ch. 510, § 12. Effective date. — Laws 2003, ch. 510 contains an effective date provision, but, pursuant to N.M. Const., art. IV, § 33, was, effective June 20, 2003, 90 days after adjournment of the legislature.

ARTICLE 6

Sale of Public Property

Sec. 13-6-1. Disposition of obsolete, worn-out or unusable tangible personal property.

Sec. 13-6-2. Sale of property or state agencies or local public bodies; authority to sell or dispose of property; approval of appropriate agency.

Sec. 13-6-2.1. Sale, trade or lease; state board of finance approval.

Sec. 13-6-3. Sale, trade or lease of real property by state agencies; approval of legislature; exceptions.

Sec. 13-6-4. Sale of real property by state agencies; legal description, right of refusal, refund.

Sec. 13-6-5. Surplus property bureau; transferred; duties, powers.

Sec. 13-6-6. Surplus property fund; transferred; expenditures.

Sec. 13-6-7. Disposition of state property.

13-6-1. Disposition of obsolete, worn-out or unusable tangible personal property.

A. The governing authority of each state agency, local public body, school district and state educational institution may dispose of any item of tangible personal property belonging to that authority and delete the item from its public inventory upon a specific finding by the authority that the item of property is:
   1. of a current market value of five thousand dollars ($5,000) or less; and
   2. worn-out, unusable or obsolete to the extent that the item is no longer economical or safe for continued use by the body.

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B. The governing authority shall, as a prerequisite to the disposition of any item of tangible personal property:

(1) designate a committee of at least three officials of the governing authority to approve and oversee the disposition; and

(2) give notification at least thirty days prior to its action making the deletion by sending a copy of the formal finding and the proposed disposition of the property to the state auditor and the appropriate approval authority designated in Section 13-6-2 NMSA 1978, duly sworn and subscribed under oath by each member of the authority approving the action.

C. A copy of the official finding and proposed disposition of the property sought to be disposed of shall be made a permanent part of the official minutes of the governing authority and maintained as a public record subject to the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978).

D. The governing authority shall dispose of the tangible personal property by negotiated sale to any governmental unit of an Indian nation, tribe or pueblo in New Mexico or by negotiated sale or donation to other state agencies, local public bodies, school districts, state educational institutions or municipalities or through the central purchasing office of the governing authority by means of competitive sealed bid or public auction or, if a state agency, through the surplus property bureau of the transportation services division of the general services department.

E. A state agency shall give the surplus property bureau of the transportation services division of the general services department the right of first refusal when disposing of obsolete, worn-out or unusable tangible personal property of the state agency.

F. If the governing authority is unable to dispose of the tangible personal property pursuant to Subsection D or E of this section, the governing authority may sell or, if the property has no value, donate the property to any organization described in Section 1514(c) of the Internal Revenue Code of 1986.

G. If the governing authority is unable to dispose of the tangible personal property pursuant to Subsection D or E of this section, it may order that the property be destroyed or otherwise permanently disposed of in accordance with applicable laws.

H. If the governing authority determines that the tangible personal property is hazardous or contains hazardous materials and may not be used safely under any circumstances, the property shall be destroyed and disposed of pursuant to Subsection G of this section.

I. No tangible personal property shall be donated to an employee or relative of an employee of a state agency, local public body, school district or state educational institution, provided that nothing in this subsection precludes an employee from participating and bidding for public property at a public auction.

J. This section shall not apply to any property acquired by a museum through abandonment procedures pursuant to the Abandoned Cultural Property Act 11-10-1 to 11-10-5 NMSA 1978.

K. Notwithstanding the provisions of Subsection A of this section, the department of transportation may sell through public auctions or dispose of surplus tangible personal property used to manage, maintain or build roads that exceeds five thousand dollars ($25,000) in value. Proceeds from sales shall be credited to the state road fund. The department of transportation shall notify the department of finance and administration regarding the disposition of all property.


Cross references — For managing surplus property, see Article 15-5-6 NMSA 1978.

For Subsection 1514(c)(3) of the Internal Revenue Code of 1986, see 26 U.S.C. § 1514(c)(3).

The 2012 amendment, effective May 15, 2012, authorized the department of transportation to dispose of surplus tangible personal property that exceeds five thousand dollars in value, and added Subsection E.

The 2007 amendment, effective July 1, 2007, required state agencies to give the surplus property bureau the right of first refusal when disposing of surplus property.

The 2001 amendment, effective June 15, 2001, inserted Subsection D; renumbered the subsequent subsections; inserted "or F" to current Subsection F; inserted "or F" to current Subsection G; and updated the subsection reference in current Subsection II.

The 1990 amendment, effective May 20, 1988, substituted "vessels" for "vessels or unusable tangible personal property" for "land and unusable personal property" in the section heading; inserted "vessels" preceding "property" in Subsection A; renumbered Subsection B, at the end of Subsection C, inserted "and maintained as a public record subject to the Inspection of Public Records Act", in Subsection D, substituted "vessels" for "vessels or unusable personal property" for "vessels or unusable personal property" for "vessels following "vessels\"", inserted "to any governmental unit of an Indian nation, tribe or pueblo in New Mexico or by negotiated sale or donation", inserted "of the governing authority" following "offer", and added "state agency" at the end of the subsection; and added Subsections E through H, and redesignated former Subsection D as Subsection I.

The 1990 amendment, effective June 14, 1989, inserted "or donation" in Subsection D.

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13-6-2. Sale of property by state agencies or local public bodies; authority to sell or dispose of property; approval of appropriate approval authority.

A. Providing a written determination has been made, a state agency, local public body, school district or state educational institution may sell or otherwise dispose of real or tangible personal property belonging to the state agency, local public body, school district, or state educational institution.

B. A state agency, local public body, school district or state educational institution may sell or otherwise dispose of real property:

(1) by negotiated sale or donation to an Indian nation, tribe or pueblo located wholly or partially in New Mexico, or to a governmental unit of an Indian nation, tribe or pueblo in New Mexico, that is authorized to purchase land and control activities on its land by an act of congress or to purchase land on behalf of the Indian nation, tribe or pueblo;

(2) by negotiated sale or donation to other state agencies, local public bodies, school districts or state educational institutions;

(3) through the central purchasing office of the state agency, local public body, school district or state educational institution by means of competitive sealed bid, public auction or negotiated sale to a private person or to an Indian nation, tribe or pueblo in New Mexico; or

(4) if a state agency, through the surplus property bureau of the transportation services division of the general services department.

C. A state agency shall give the surplus property bureau of the transportation services division of the general services department the right of first refusal to dispose of tangible personal property of the state agency. A school district may give the surplus property bureau the right of first refusal to dispose of tangible personal property of the school district.

D. Except as provided in Section 13-6-2.1 NMSA 1978 requiring state board of finance approval for certain transactions, sale or disposition of real or tangible personal property having a current resale value of more than five thousand dollars ($5,000) may be made by a state agency, local public body, school district or state educational institution if the sale or disposition has been approved by the state budget division of the department of finance and administration for state agencies, the local government division of the department of finance and administration for local public bodies, the public education department for school districts and the higher education department for state educational institutions.

E. Prior approval of the appropriate approval authority is not required if the tangible personal property is to be used as a trade-in or exchange pursuant to the provisions of the Procurement Code [Sections 13-1-28 through 13-1-199 NMSA 1978].

F. The appropriate approval authority may condition the approval of the sale or other disposition of real or tangible personal property upon the property being offered for sale or donation to a state agency, local public body, school district or state educational institution.

G. The appropriate approval authority may credit a payment received from the sale of such real or tangible personal property to the governmental body making the sale. The state agency, local public body, school district or state educational institution may convey all or any interest in the real or tangible personal property without warranty.

H. This section does not apply to:

(1) computer software of a state agency;

(2) those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico;

(3) the New Mexico state police division of the department of public safety;

(4) the state land office or the department of transportation;
PUBLIC PURCHASES AND PROPERTY


Exemption of leases — State law does not require for state fair concession to use a bid or request for proposal when operating spaces beyond the range of an existing contract. However, if the current revenue base of the property be about $5,000, the director of finance and administration may, pursuant to this section, approve any extension. Add. If a lease is extended for a term extending beyond the 24-year period specified in 13-5-3 NMSA 1978, legislative approval is required. 1964 Op. Ariz. Gen. No. 64-92.

Exclusive rights to private or religious group — The public body may consecrate desire to enter into a lease of real property to any private party or religious group and proposes to give exclusive right of possession and occupancy to lands and buildings, the state board of finance must give the approval pursuant to this section. 1964 Op. Ariz. Gen. No. 64-92.

State parks division must get permission — The section gives the state park commission (now state parks division of the natural resources department), as well as any other commission or agency of the state, the authority to sell, or otherwise dispose of, any property owned by the state, subject to the approval of the state board of finance. 1964 Op. Ariz. Gen. No. 64-115.

Lease for a oil and gas leases in district land and water conservancy district shall have power of sale of its assets, this power is subject to regulation by the legislature. 1964-66 Op. Ariz. Gen. No. 62-122.

When permission is not necessary — When the use permitted by lease of a public body in proximity or brief, and licensed to know when the property is not needed for public purposes, the approval of the state board of finance is not necessary, and the public body may by its in the manner required by the legislation. 1964 Op. Ariz. Gen. No. 64-92.


When purchased against public policy — A notice of a local body of education may not lawfully be for the public body which is offered to a school district, irrespective of whether such property is sold for less than $50,000 in value, and not cost of purchase would be void if it be against the public policy. 1963-64 Op. Ariz. Gen. No. 66-13.

When reimbursement necessary — Because of the requirement of M.C. Chait., art. IX, § 14, it is inconsistent upon any public agency or institution to obtain reimbursement for any actual expense incurred by reason of purchased private use of public facilities. 1964 Op. Ariz. Gen. No. 64-92.

Long-term leases with boys school permissible — A municipality may enter into a long-term lease with the New Mexico boys school for the land and buildings for the purpose of setting up a recreation center for the community and the surrounding area, and which will be under the control and supervision of the municipality. 1964 Op. Ariz. Gen. No. 64-92.

Rural agency leasing forms not comply with other laws — In 1978-80 NMSA 1978, the forms for leasing oil and gas leases and oil and gas leases for agricultural purposes other than the oil of the commission of public lands not comply with the forms and conditions of 1969-70 NMSA 1978, even where such leases are issued through the facilities of the commissioner as an unincorporated to another state agency, 1980 Op. Ariz. Gen. No. 80-30.

Power to credit where no specific directions — In the absence of a specific direction the director (secretary) of the department of finance and administration has the power to credit the money received from a sale of the state palace headquarters to whatever fund of the state palace he deems appropriate. 2965 Op. Ariz. Gen. No. 89-98.

Highway department condemnation proceedings. — Part though legislative approval prior in condemnation by the state highway department is not necessary under 43-3-3 NMSA 1978, this section still controls the distribution of proceeds from the suit or condemnation. 1969 Op. Ariz. Gen. No. 59-144.

Am. Jus. 54 A.I.; and C.S. references. — 50 Am. Jus. 3d Municipal Corporations, Counties and Other Political Subdivisions § 64 to 68; G.C. Am. Jur. 2d Public Landlord § 29; Am. Jur. 2d Succession, §§ 64 to 67; Condemnation §§ 64 to 67. Constitutional prohibitions of municipal corporation leasing the credit or making donations as applicable to sale of its property. 1968 1st Supplement, § 518.

Contractualization of financing of purchase in accordance with the policy of the public body. 1969 1st Supplement, § 519.

Power of municipal corporation to sell, lease, or mortgage public utility plant or interest therein, 46.1 A.R.M. 2.50.

Power of municipal corporation to lease or sublet property, or lease or sublet property, 46.1 A.R.M. 3.10.


13-6-2.1. Sales, trades or leases; state board of finance approved.

1. Unless as provided in Section 13-6-3 NMSA 1978, for state agencies, any sales, trade or lease for a period of more than five years of real property belonging to a state agency, local public body or school district, any trading or lease of such real property for a period of more than five thousand dollars ($35,000) shall not be valid unless it is approved prior to its effective date by the state board of finance.

2. The provisions of this section shall not be applicable to:

(a) those institutions specifically mentioned in Article 12, Section 11 of the constitution of New Mexico;

(b) the state land office;

(c) the state transportation commission;

(d) the economic development department when disposing of property acquired pursuant to the Statewide Economic Development Finance Act [25-5-1 NMSA 1978]; or

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13-6-3. Sale, trade or lease of real property by state agencies; approval of legislature; exceptions.

A. Any sale, trade or lease for a period exceeding twenty-five years in duration of real property belonging to any state agency, which sale, trade or lease shall be for a consideration of one hundred thousand dollars ($100,000.00) or more, shall be subject to the ratification and approval of the state legislature prior to the sale, trade or lease becoming effective. The provision specified in Section 13-6-2 NMRA 1978 requiring approval of the state budget direction of the department of finance and administration as a prerequisite to consummating such sales or dispositions of realty shall not be applicable in instances wherein the consideration for the sale, trade or lease shall be for a consideration of one hundred thousand dollars ($100,000.00) or more and wherein a state agency not specifically excepted by Subsection B of this section in a contracting party, and, in every such instance, the legislature shall specify its approval prior to the sale, trade or lease becoming effective.

The provisions of this section shall not be applicable as to those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico, the state land office, the state transportation commission or the economic development department when disposing of property acquired pursuant to the Statewide Economic Development Finance Act 8-25-1 NMRA 1978.

13-6-3. Sale, trade or lease of real property by state agencies: approval of legislature; exceptions.

A. Any sale, trade or lease of real property by state agencies: approval of legislature: exceptions.

A. Any sale, trade or lease of real property by state agencies: approval of legislature: exceptions.
of the bond and remittance shall be negotiated by the parties subject to the approval of either the legislature or the state board of highway engineering, as the agent of being involved. 1965 Op. Atty Gen. No. 64-33.

When other party is also public agency. — Requirements under this section for prior approval by the administrative agency is applicable even though the other party to each agreement may be another public agency such as the state land office or the state highway commission under transportation commission's transportation commission approved or the state highway commission approved by the state highway commission. 1964 Op. Atty Gen. No. 62-44.

State fair commissions. — This section recommends legislative consideration of any lease or rental of the New Mexico state fair property for a period extending 25 years and which includes consideration of $130,000 or more. 1964 Op. Atty Gen. No. 62-42.

Protection of leases. — State law does not require the state to examine any bid or request for proposal when extending leases beyond the term of an existing contract. However, if the current re- tained value of the property leased exceeds $5,000, the department of finance and administration must, prior to this section, approve any extension. And, if a lease expires without extension beyond the 25-year period specified in this section, legislative approval is required. 1967 Op. Atty Gen. No. 67-75.

When approval not needed. — The state highway department (now state highway and transportation department) or transportation department (now transportation department) may consider bonds to be issued to the federal government if the state and federal government agree to the issuance of such bonds, to be issued to the federal government if the state and federal government agree to the issuance of such bonds. 1965 Op. Atty Gen. No. 67-14.

School districts are mentioned. — School districts are not be considered as public or governmental. It cannot be argued that local school districts are agencies, boards, departments, commissions or subdivisions of this state, 1965-66 Op. Atty Gen. No. 64-54.

13-6-4. Definitions. As used in Chapter 13, Article 6 NMSA 1978:

A. "Interpret public body" means all political subdivisions, except municipalities and school districts, of the state and their agencies, instrumentalities and institutions;

B. "State agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions other than state educational institutions;

C. "State educational institutions" means those educational institutions designated by Apple 13, Section 13 of the constitution of New Mexico; and

D. "School districts" means those political subdivisions of the state established for the administration of public schools, segregated geographically for taxation and bonding purposes and governed by the Public School Code (Chapter 22 NMSA 1978, except Article 5A NMSA, 1978).


The 2001 session of the legislative session June 15, 2001, substituted "Chapter 13, Article 6" for "Sections 13-6-1 through 13-6-4.

13-6-5. Sale of real property by state agencies. Land grant right of first refusal. A. Notwithstanding the provisions of Section 13-6-2 or 67-3-83 NMSA 1978, a state agency shall give the board of trustees of a community land grant governing process to the provisions of Chapter 49, Article 1 NMSA 1972, or by statute specific to the named land grant the right of first refusal when selling real property belonging to the state agency if the property is located in the boundaries of the community land grant as defined in the United States patent to the grant.

B. If the board of trustees of the community land grant does not purchase the land offered for sale or does not respond to the notice of sale within forty-five days of receipt of the notice, the state agency may otherwise dispose of the property in accordance with applicable law.

C. The provisions of this section do not apply to lands held in trust pursuant to the Enabling Act.
for distribution of federal surplus personal property, excepting food commodities, in accordance with subdivision (j) of Section 206 of the Federal Property and Administrative Services Act of 1949. The surplus property bureau is also designated as the agency for distribution or disposal of state surplus property.

B. The surplus property bureau shall:
(1) develop a detailed state plan of operation for the management and administration of surplus property acquired from the federal government that complies with the Federal Property and Administrative Services Act of 1949 and regulations promulgated in accordance with that act;
(2) cooperate with the federal government and its agencies in securing the expeditious and equitable distribution of federal surplus personal property, excepting food commodities, to eligible institutions in New Mexico, and assist those institutions in securing that property;
(3) dispose of nonusable federal surplus property in accordance with subdivision (j) of Section 206 of the Federal Property and Administrative Services Act of 1949; and
(4) manage a program to recycle, donate, sell or dispose of state surplus tangible personal property.

C. The surplus property bureau may:
(1) enter into agreements with the federal government or its agencies for the purchase, lease, receipt as a loan or gift or any other means of acquisition of any real or personal property without regard to provisions of any law that require:
(a) the posting of notice or public advertising for bids;
(b) the inviting or receiving of competitive bids;
(c) the delivery of purchases before payment;
(2) enter into cooperative agreements for the sale, transfer or disposal of federal surplus property that has not been distributed;
(3) enter into contracts with other state agencies for the purpose of acquiring or disposing of any tangible personal property originally purchased with state money as specified by rule of the transportation services division of the general services department; and
(4) designate the representative of a user to enter a bid at a sale of real or personal property owned by the United States government or any agency or department thereof and authorize that person to make payment required in connection with the bidding.

History: Laws 2007, ch. 87, § 1.

Cross references. — For the transportation services division, see 5-17-8-NMCA 1978.

Effective dates. — Laws 2007, ch. 87, § 8 made the section effective July 1, 2007.

13-6-7. Surplus property fund; created; expenditures.

A. The 'surplus property fund' is created as a nonreverting fund in the state treasury. The fund consists of money received from the sale of surplus property by the surplus property bureau of the transportation services division of the general services department. The surplus property bureau shall administer the fund, and money in the fund is subject to appropriation by the legislature to carry out activities relating to the acquisition, transfer and sale of surplus government property. Money in the fund shall be disbursed on vouchers approved and warrants signed by the director of the transportation services division of the general services department or the director's authorized representative.

B. Money in the surplus property fund attributable to the sale of federal property shall be held and accounted for separately from money attributable to the purchase or sale of state property.

History: Laws 2007, ch. 87, § 2.


13-6-8. Disposition of state property.

The surplus property bureau of the transportation services division of the general services department may dispose of tangible personal property, except property acquired from the United States government, by advertising the availability of the property as follows:

A. For the first forty-five-day period, to any agency that has entered into an agreement with the bureau;

B. For the second forty-five-day period, to any agency or tax-exempt entity that has filed its written certificate of tax exemption with the bureau.

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C. for the third forty-five-day period, to any agency or tax-exempt entity as to the public through a storefront operation on days and at times specified by rule of the bureau; and
D. after the third forty-five-day period, by auction or any other means of disposal in compliance with environmental standards for disposal of tangible personal property.


Effective date. — Laws 2007, ch. 57, § 8 made the sections effective July 1, 2007.

ARTICLE 7

Health Care Purchasing

Sec. 13-7-1. Short title.

Sec. 13-7-2. Purpose of act.

Sec. 13-7-3. Definitions.

Sec. 13-7-4. Mandatory consolidated purchasing.

Sec. 13-7-5. Consolidated purchasing for other persons.

Sec. 13-7-6. Use of social security numbers.

Sec. 13-7-7. Consolidated administrative functions; bene-

Sec. 13-7-8. Maximum age of dependent.


Secs. 13-7-10 through 13-7-11. Required coverage of patient costs incurred in cancer clinical trials.

Secs. 13-7-12 through 13-7-13. Coverage of prescription drug profiles.

13-7-1. Short title.

Chapter 13, Article 7 NMSA 1978 may be cited as the "Health Care Purchasing Act".

History: Laws 1997, ch. 74, § 1; 2000, ch. 201, § 1.

Compiler’s notes. — The Health Care Purchasing Act was created by Laws 1997, ch. 74, §§ 1 to 4 and codified at 13-7-1 through 13-7-13 NMSA 1978. Laws 2000, ch. 201, §§ 1 to 9 added three new sections to the Health Care Purchasing Act, which were codified as 13-7-1 through 13-7-3 NMSA 1978.

The 2003 amendment, effective June 20, 2003, substituted "Chapter 13, Article 7 NMSA 1978" for "Sections 1 through 4 of this act".

13-7-2. Purpose of act.

The purpose of the Health Care Purchasing Act (13-7-1 NMSA 1978) is to ensure public employs, public school employees and retirees of public employment and the public schools access to more affordable and enhanced quality of health insurance through cost containment and savings effected by procedures for consolidating the purchasing of publicly financed health insurance.

History: Laws 1997, ch. 74, § 2.

13-7-3. Definitions.

As used in the Health Care Purchasing Act (13-7-1 NMSA 1978):
A. "consolidated purchasing" means a single process for the procurement of all health care benefits by the publicly funded insurance agencies in compliance with the Procurement Code (Sections 13-3-1 through 13-3-199 NMSA 1978) and includes associated activities related to the procurement such as actuarial, cost containment, benefit consultation and analysis; and
B. "publicly funded health care agency" means the:
(1) risk management division and the group benefits committee of the general services department;
(2) retiree health care authority;
(3) public school insurance authority; and
(4) publicly funded health care program of any public school district with a student enrollment in excess of sixty thousand students.

History: Laws 1997, ch. 74, § 3.

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13-7-4. Mandatory consolidated purchasing.
A. The agencies shall enter into a cooperative consolidated purchasing effort to provide plans of health care benefits for the benefit of eligible participants of the respective agencies. The request for proposal shall set forth one or more plans of health care benefits and shall include accommodation of fully funded arrangements as well as varying degrees of self-funded pool options.
B. A consolidated purchasing request for proposals for all health care benefits by the publicly funded health care agencies shall be issued on or before July 1, 1999 and any contracts for health care benefits renewed or issued on or after July 1, 2000 shall be the result of consolidated purchasing.
C. All requests for proposals issued as part of the consolidated purchasing shall include at least one distinct service area consisting of the Albuquerque metropolitan area. Proposals on a distinct service area shall be evaluated separately.


13-7-5. Consolidated purchasing for other persons.
A. Counties, municipalities, state educational institutions and other political subdivisions that wish to use the consolidated purchasing single process for the procurement of health care benefits shall create or enter into an existing association, cooperative or other mutual alliance to create larger pools of eligible participants.
B. Counties, municipalities, state educational institutions and other political subdivisions that wish to use the consolidated purchasing single process shall, through their respective association, cooperative or mutual alliance, participate in the subsequent consolidated purchasing single process with the publicly funded health care agencies.

Effective date: — Laws 2001, ch. 361 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2001, 90 days after adjournment of the legislature.

13-7-6. Use of social security numbers.
The publicly funded health care agencies, political subdivisions and other persons providing health care benefits through the consolidated purchasing single process, in compliance with state and federal law, shall not require the use of participants’ social security numbers as health care benefit plan identification numbers.

Effective date: — Laws 2001, ch. 361 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2001, 90 days after adjournment of the legislature.

13-7-7. Consolidated administrative functions; benefit.
A. By December 1, 2001, the newly funded health care agencies, political subdivisions and other persons participating in the consolidated purchasing single process pursuant to the Health Care Purchasing Act shall cooperatively study and provide a status report on the consolidation of administrative functions to the legislative health and human services committee and the governor.
B. By December 31, 2000, the publicly funded health care agencies, political subdivisions and other persons participating in the consolidated purchasing single process pursuant to the Health Care Purchasing Act shall consolidate, standardize and administer the administrative functions that these entities can effectively and efficiently administer as reflected in the study.
C. The publicly funded health care agencies, political subdivisions and other persons participating in the consolidated purchasing single process pursuant to the Health Care Purchasing Act may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act (11-1-1 through 11-1-7 NMSA 1978) with the publicly funded health care agencies and political subdivisions to determine the most efficient or provision of resources to consolidate, standardize and administer the consolidated purchasing single process and subsequent activities pursuant to the Health Care Purchasing Act. The publicly funded health care agencies, political subdivisions and other persons participating in the consolidated purchasing single process pursuant to the Health Care Purchasing Act may enter...
into contracts with nonprofit persons to provide the services of determining assessments or provision of resources for consolidation, standardization and administrative activities.

D. Each agency will retain its responsibility to determine policy direction of the benefit plans, plan development, training and coordination with respect to participants and to benefit staff, as well as to respond to benefit eligibility inquiries and establish and enforce eligibility rules.

E. Notwithstanding Subsection D of this section, publicly funded health care agencies, political subdivisions and other persons in the consolidated purchasing single process pursuant to the Health Care Purchasing Act shall provide coverage for children, from birth through three years of age, for or under the family, infant, toddler program administered by the Department of Health, provided eligibility criteria are met, for a maximum benefit of three thousand five hundred dollars ($3,500) annually for medically necessary early intervention services provided as part of an individualized family service plan, and delivered by certified and licensed personnel as defined in 75.9-6 YMAC who are working in early intervention programs approved by the department of health. No payment under this subsection shall be applied against any maximum lifetime or annual limits specified in the policy. health benefit plans or contracts.

History: Laws 2000, ch. 351, 1; 2001, ch. 177, 41.

The 2005 amendment, effective July 1, 2006, added Subsection E to require coverage for children from birth through three years of age under the family, infant, toddler program for a maximum benefit of $3,500 for medically necessary early intervention services.

ANNOTATIONS


13-7-8. Maximum age of dependent.

Any group health care coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act on or after July 1, 2005 that offers coverage of an insured's dependent shall not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's twenty-fifth birthday, regardless of whether the dependent is enrolled in an educational institution.

History: Laws 2000, ch. 351, 1; 2001, ch. 177, 41.

Effective date. — Laws 2000, ch. 351 contained an effective date provision, 351, Permanent to N.M. Const., art. IV, § 20, was effective June 20, 2000, 90 days after adjournment of the legislature.


A. Group health care coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage for hospitalization and general anesthesia provided in a hospital or ambulatory surgical center for dental surgery for the following:

(1) Injuries exhibiting physical, intellectual or medically compromising conditions for which dental treatment under local anesthesia, with or without additional sedation techniques and modalities, cannot be expected to provide a successful result and for which dental treatment under general anesthesia can be expected to produce superior results;

(2) Injuries for whom local anesthesia is ineffective because of acute infection, anatomic variation or allergy;

(3) Injured children or adolescents who are extremely uncooperative, fearful, anxious or uncommunicative with dental needs of such magnitude that treatment should not be postponed or deferred and for whom local treatment can be expected to result in dental or oral pain or infection, loss of teeth or other increased oral or dental morbidity;

(4) Injured with extensive oral facial or dental trauma for which treatment under local anesthesia would be ineffective or unfeasible; or

(5) Other procedures for which hospitalization or general anesthesia in a hospital or ambulatory surgical center is medically necessary.

B. The provisions of this section do not apply to short-term travel, accident-only or limited or specified disease policies.

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C. Coverage for dental surgery may be subject to copayments, deductibles, and coinsurance subject to network and prior authorization requirements consistent with those imposed on other benefits under the same group health care coverage, including any form of self-insurance.

History: Laws 2007, ch. 218, § 1.

Effective date: — Laws 2007, ch. 218, § 6 made this section effective July 1, 2007.

13-7-10. Hearing aid coverage for children required.

A. Group health care coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage for a hearing aid and any related service for the full cost of one hearing aid per hearing-impaired ear up to two thousand two hundred dollars ($2,200) over a thirty-six month period for hearing aids for insured children under eighteen years of age or under twenty-one years of age if still attending high school. The insured may choose a higher priced hearing aid and may pay the difference in cost above the two-thousand-two-hundred-dollar ($2,200) limit as provided in this subsection without financial or contractual penalty to the insured or to the provider of the hearing aid.

B. Each insurer that delivers, issues for delivery or renewes under the Health Care Purchasing Act any group health care coverage, including any form of self-insurance, may make available to the policyholder the option of purchasing additional hearing aid coverage that exceeds the services described in this section.

C. Hearing aid coverage offered shall include fitting and dispensing service, including providing ear molds as necessary to maintain optimal fit, provided by an audiologist, a hearing aid dispenser or a physician, licensed in New Mexico.

D. The provisions of this section do not apply to short-term travel, accident-only or limited or specified disease policies.

E. Coverage for hearing aids may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same group health care coverage, including any form of self-insurance.

F. For the purposes of this section, "hearing aid" means durable medical equipment that is of a design and dexterity to optimize availability and listening skills in the environment commonly experienced by children.


13-7-11. Required coverage of patient costs incurred in cancer clinical trials.

Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage pursuant to Section 64A-22-43 NMSA 1978 for routine patient care costs incurred as a result of the patient’s participation in cancer clinical trials.


Effective date: — Laws 2009, ch. 212 contained no effective date provision, but, pursuant to N.M.

13-7-12. Coverage for orally administered anticancer medications; limits on patient costs.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that provides coverage for cancer treatment shall provide coverage for a prescription, orally administered anticancer medication that is used to kill or slow the growth of cancerous cells to a level no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits by the plan.

B. A group health plan shall not increase patient cost sharing for anticancer medications in order to achieve compliance with the provisions of this section.

C. Coverage of orally administered anticancer medication shall not be subject to any prior authorization, dollar limit, copayment, deductible or coinsurance provision that does not apply to intra-
voously administered or injected anticancer medication used to kill or slow the growth of cancerous cells.

History: Laws 2011, ch. 55, § 1.
Applicability. — Laws 2011, ch. 55, § 6 provided that the provisions of this act apply to insurance pub-
ces that provide coverage for cancer treatment and that are delivered, issued for delivery, amended, re-
named or continued in this state on or after January 1, 2012.

15-7-13. Coverage of prescription eye drop refills. (Effective January 1, 2013.)

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that provides coverage for prescription eye drops shall not deny coverage for a renewal of prescription eye drops when:

(1) the renewal is requested by the insured at least twenty-seven days for a thirty-day supply of eye drops, forty-five days for a sixty-day supply of eye drops or sixty-eight days for a ninety-day supply of eye drops from the later of the date that the original prescription was dispensed to the insured or the date that the last renewal of the prescription was dispensed to the insured; and

(2) the prescriber indicates on the original prescription that additional quantities are needed and that the renewal requested by the insured does not exceed the number of additional quantities needed.

B. As used in this section, "prescriber" means a person who is authorized pursuant to the New Mex-
ico Drug, Device and Cosmetic Act (Chapter 26, Article 1 NMSA 1978) to prescribe prescription eye drops.

History: Laws 2012, ch. 27, § 2.
Effective dates. — Laws 2012, ch. 27, § 7 provided that the provisions of Laws 2012, ch. 27, §§ 1 to 5 apply to insurance policies that provide coverage for prescription eye drops and that are delivered, issued for delivery, amended, renewed or continued in this state on or after January 1, 2013.

ARTICLE 8
Public Building Plaques

Sec.
13-8-1. Public building; acknowledgment of tax-
payers when elected officials acknowl-
edged.

13-8-1. Public buildings; acknowledgment of taxpayers when elected officials acknowledged.

On every new public building plaque that lists, acknowledges or thanks the elected officials who were in office at the time the building was built, constructed or purchased, there shall be included a statement of equal size and visibility that thanks the taxpayers of New Mexico for their contribution in funding the construction or renovation.

Effective dates. — Laws 2001, ch. 66 contained no effective date provision, but, pursuant to N.M. Stat.,
art. IV, § 53, was effective June 15, 2001, 90 days after adoption of the legislation.