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HOUSE BILL 309

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

INTRODUCED BY

David C. Chavez

AN ACT

RELATING TO GOVERNMENT CONTRACTING; APPLYING PROCUREMENT CODE
PROCEDURES TO CERTAIN LEASES OF REAL PROPERTY; PROVIDING FOR A
CEILING ON LEASE PAYMENTS; INCREASING THE BID PREFERENCE FOR
RESIDENT BUSINESSES; CREATING A BID PREFERENCE FOR NEW MEXICO
VETERANS; PROVIDING ADDITIONAL REQUIREMENTS FOR SOLE SOURCE
CONTRACTS; PROVIDING FOR ADDITIONAL INFORMATION TO BE POSTED ON
THE INTERNET; REQUIRING ANNUAL AUDITS OF CONSTRUCTION
CONTRACTS; PROHIBITING PUBLIC MONEY FROM BEING EXPENDED AFTER
JUNE 30, 2012 PURSUANT TO A LEASE OR PROCUREMENT CONTRACT,
UNLESS THE CONTRACT WAS ENTERED INTO PURSUANT TO LAW ON OR
AFTER JULY 1, 2011; PROVIDING FOR TEMPORARY WAIVERS FROM THE
PROHIBITION; RECONCILING CONFLICTING AMENDMENTS TO THE SAME
SECTION OF LAW IN LAWS 2001 BY REPEALING LAWS 2001, CHAPTER
293, SECTION 1.

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

2 SECTION 1. Section 13-1-21 NMSA 1978 (being Laws 1979,
3 Chapter 72, Section 1, as amended) is amended to read:

4 "13-1-21. APPLICATION OF PREFERENCES.--

5 A. For the purposes of this section:

6 (1) "resident business" means a [~~New Mexico~~
7 ~~resident business or a New York state business enterprise;~~

8 (~~2) "New Mexico resident business" means a]~~
9 business that is authorized to do and is doing business under
10 the laws of this state and that:

11 (a) [~~that~~] maintains its principal place
12 of business in the state;

13 (b) has staffed an office and has paid
14 applicable state taxes for two years prior to the awarding of
15 the bid and has five or more employees who are residents of the
16 state; or

17 (c) is an affiliate of a business that
18 meets the requirements of Subparagraph (a) or (b) of this
19 paragraph. As used in this section, "affiliate" means an
20 entity that directly or indirectly through one or more
21 intermediaries controls, is controlled by or is under common
22 control with the qualifying business through ownership of
23 voting securities representing a majority of the total voting
24 power of the entity;

25 [~~(3) "New York state business enterprise"~~

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1 ~~means a business enterprise, including a sole proprietorship,~~
2 ~~partnership or corporation, that offers for sale or lease or~~
3 ~~other form of exchange, goods or commodities that are~~
4 ~~substantially manufactured, produced or assembled in New York~~
5 ~~state, or services, other than construction services, that are~~
6 ~~substantially performed within New York state. For purposes of~~
7 ~~construction services, a "New York state business enterprise"~~
8 ~~means a business enterprise, including a sole proprietorship,~~
9 ~~partnership or corporation, that has its principal place of~~
10 ~~business in New York state;~~

11 ~~(4) "resident manufacturer" means a person who~~
12 ~~offers materials grown, produced, processed or manufactured~~
13 ~~wholly in the state; provided, however, that a New York state~~
14 ~~business enterprise shall be deemed to be a resident~~
15 ~~manufacturer solely for the purpose of evaluating the New York~~
16 ~~state business enterprise's bid against the bid of a resident~~
17 ~~manufacturer that is not a New York state business enterprise;~~

18 ~~(5) "recycled content goods" means supplies~~
19 ~~and materials composed in whole or in part of recycled~~
20 ~~materials; provided that the recycled materials content meets~~
21 ~~or exceeds the minimum content standards required by bid~~
22 ~~specification;~~

23 ~~(6) "virgin content goods" means supplies and~~
24 ~~materials that are wholly composed of nonrecycled materials or~~
25 ~~do not meet minimum recycled content standards required by bid~~

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1 ~~specification]; and~~

2 (2) "resident veteran business" means a
3 resident business, the majority ownership of which is held by
4 New Mexico residents who have been honorably discharged from
5 membership in the armed forces of the United States.

6 ~~[B. When bids are received only from nonresident~~
7 ~~businesses and resident businesses and the lowest responsible~~
8 ~~bid is from a nonresident business, the contract shall be~~
9 ~~awarded to the resident business whose bid is nearest to the~~
10 ~~bid price of the otherwise low nonresident business bidder if~~
11 ~~the bid price of the resident bidder is made lower than the bid~~
12 ~~price of the nonresident business when multiplied by a factor~~
13 ~~of .95.~~

14 ~~C. When bids are received only from nonresident~~
15 ~~businesses and resident manufacturers and the lowest~~
16 ~~responsible bid is from a nonresident business, the contract~~
17 ~~shall be awarded to the resident manufacturer whose bid is~~
18 ~~nearest to the bid price of the otherwise low nonresident~~
19 ~~business bidder if the bid price of the resident manufacturer~~
20 ~~is made lower than the bid price of the nonresident business~~
21 ~~when multiplied by a factor of .95.~~

22 ~~D. When bids are received only from resident~~
23 ~~businesses and resident manufacturers and the lowest~~
24 ~~responsible bid is from a resident business, the contract shall~~
25 ~~be awarded to the resident manufacturer whose bid is nearest to~~

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1 ~~the bid price of the otherwise low resident business bidder if~~
2 ~~the bid price of the resident manufacturer is made lower than~~
3 ~~the bid price of the resident business when multiplied by a~~
4 ~~factor of .95.~~

5 ~~E. When bids are received from resident~~
6 ~~manufacturers, resident businesses and nonresident businesses~~
7 ~~and the lowest responsible bid is from a resident business, the~~
8 ~~contract shall be awarded to the resident manufacturer whose~~
9 ~~bid is nearest to the bid price of the otherwise low resident~~
10 ~~business bidder if the bid price of the resident manufacturer~~
11 ~~is made lower than the bid price of the resident business when~~
12 ~~multiplied by a factor of .95.~~

13 ~~F. When bids are received from resident~~
14 ~~manufacturers, resident businesses and nonresident businesses~~
15 ~~and the lowest responsible bid is from a nonresident business,~~
16 ~~the contract shall be awarded to the resident manufacturer~~
17 ~~whose bid is nearest to the bid price of the otherwise low~~
18 ~~nonresident business bidder if the bid price of the resident~~
19 ~~manufacturer is evaluated as lower than the bid price of the~~
20 ~~nonresident business when multiplied by a factor of .95. If~~
21 ~~there is no resident manufacturer eligible for award under this~~
22 ~~provision, then the contract shall be awarded to the resident~~
23 ~~business whose bid is nearest to the bid price of the otherwise~~
24 ~~low nonresident business bidder if the bid price of the~~
25 ~~resident business is made lower than the bid price of the~~

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1 ~~nonresident business when multiplied by a factor of .95.~~

2 ~~G. When bids are received for virgin content goods~~
3 ~~only or for recycled content goods only, Subsections B through~~
4 ~~F of this section shall apply.~~

5 ~~H. When bids are received for both recycled content~~
6 ~~goods and virgin content goods and the lowest responsible bid~~
7 ~~is for virgin content goods, the contract shall be awarded to:~~

8 ~~(1) a resident manufacturer offering the~~
9 ~~lowest bid on recycled content goods of equal quality if the~~
10 ~~bid price of the resident manufacturer when multiplied by a~~
11 ~~factor of .90 is made lower than the otherwise low virgin~~
12 ~~content goods bid price;~~

13 ~~(2) a resident business offering a bid on~~
14 ~~recycled content goods of equal quality if:~~

15 ~~(a) the bid price of no resident~~
16 ~~manufacturer following application of the preference allowed in~~
17 ~~Paragraph (1) of this subsection can be made sufficiently low;~~
18 ~~and~~

19 ~~(b) the lowest bid price of the resident~~
20 ~~business when multiplied by a factor of .90 is made lower than~~
21 ~~the otherwise low virgin content goods bid price; or~~

22 ~~(3) a nonresident business or nonresident~~
23 ~~manufacturer offering recycled content goods of equal quality~~
24 ~~if:~~

25 ~~(a) the bid price of no resident~~

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1 ~~business or resident manufacturer following application of the~~
2 ~~preference allowed in Paragraph (1) or (2) of this subsection~~
3 ~~can be made sufficiently low; and~~

4 ~~(b) the lowest bid price of a~~
5 ~~nonresident offering recycled content goods when multiplied by~~
6 ~~a factor of .95 is made lower than the otherwise low virgin~~
7 ~~content bid price.~~

8 ~~I. When bids are received for both recycled content~~
9 ~~goods and virgin content goods and the lowest responsible bid~~
10 ~~is for recycled content goods offered by a nonresident business~~
11 ~~or nonresident manufacturer, the contract shall be awarded to:~~

12 ~~(1) a resident manufacturer offering the~~
13 ~~lowest bid on recycled content goods of equal quality if the~~
14 ~~bid price of the resident manufacturer when multiplied by a~~
15 ~~factor of .95 is made lower than the otherwise low recycled~~
16 ~~content goods bid price; or~~

17 ~~(2) a resident business offering a bid on~~
18 ~~recycled content goods of equal quality if:~~

19 ~~(a) the bid price of no resident~~
20 ~~manufacturer following application of the preference allowed in~~
21 ~~Paragraph (1) of this subsection can be made sufficiently low;~~
22 ~~and~~

23 ~~(b) the lowest bid price of the resident~~
24 ~~business when multiplied by a factor of .95 is made lower than~~
25 ~~the otherwise low recycled content goods bid price offered by a~~

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1 ~~nonresident business or manufacturer.~~

2 ~~J. When bids are received for both recycled content~~
3 ~~goods and virgin content goods and the lowest responsible bid~~
4 ~~is for recycled content goods offered by a resident business,~~
5 ~~the contract shall be awarded to a resident manufacturer~~
6 ~~offering the lowest bid on recycled content goods of equal~~
7 ~~quality if the bid price of the resident manufacturer when~~
8 ~~multiplied by a factor of .95 is made lower than the otherwise~~
9 ~~low recycled content goods bid price.]~~

10 B. When bids are received pursuant to an invitation
11 for bids, each bid price submitted by a bidder that is not a
12 resident business shall be multiplied by 1.0, each bid price
13 submitted by a resident business that is not a resident veteran
14 business shall be multiplied by 0.9 and each bid price
15 submitted by a resident veteran business shall be multiplied by
16 0.85. After the multiplications, the contract shall be awarded
17 to the bidder whose bid price yields the lowest result.

18 [K.] C. This section shall not apply when the
19 expenditure of federal funds designated for a specific purchase
20 is involved or for any bid price greater than five million
21 dollars (\$5,000,000).

22 ~~[L. The provisions of this section shall not apply~~
23 ~~to the purchase of buses from a resident manufacturer or a New~~
24 ~~Mexico resident business that manufactures buses in New Mexico.~~
25 ~~It is the purpose of this subsection to:~~

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1 ~~(1) allow any bus manufacturer or business~~
2 ~~that manufactures buses to compete openly for public~~
3 ~~procurement contracts in New Mexico without giving preference~~
4 ~~to a business based on the location of the place of manufacture~~
5 ~~of the buses;~~

6 ~~(2) give resident manufacturers and New Mexico~~
7 ~~resident businesses that manufacture buses an equal opportunity~~
8 ~~to sell their buses in states that have reciprocal preference~~
9 ~~laws; and~~

10 ~~(3) eliminate all different treatment of any~~
11 ~~kind under New Mexico law and by all political jurisdictions in~~
12 ~~the state between New Mexico resident businesses and~~
13 ~~manufacturers that manufacture buses and businesses in other~~
14 ~~states that manufacture and sell buses.]"~~

15 SECTION 2. Section 13-1-22 NMSA 1978 (being Laws 1969,
16 Chapter 184, Section 1, as amended) is amended to read:

17 "13-1-22. RESIDENT BUSINESS AND [MANUFACTURER] RESIDENT
18 VETERAN BUSINESS CERTIFICATION--APPLICATION--INFORMATION.--No
19 resident business or resident [manufacturer] veteran business,
20 as those terms are defined in Subsection A of Section 13-1-21
21 NMSA 1978, shall be given any preference in the awarding of
22 contracts for furnishing materials or services to a state
23 agency unless the resident business or resident [manufacturer
24 ~~shall have~~] veteran business has qualified with the state
25 purchasing agent as a resident business or resident

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1 ~~[manufacturer or both]~~ veteran business by making application
2 to the state purchasing agent and receiving ~~[from him]~~ a
3 certification number. The procedure for application and
4 certification shall be as follows:

5 A. the state purchasing agent shall prepare an
6 application form for certification as a resident business or
7 ~~[manufacturer]~~ resident veteran business, requesting such
8 information and proof as ~~[he deems]~~ necessary to qualify the
9 applicant under the terms of Section 13-1-21 NMSA 1978;

10 B. the resident business or resident ~~[manufacturer]~~
11 veteran business shall complete the application form and submit
12 it to the state purchasing agent prior to the awarding of any
13 contract in which the resident business or ~~[manufacturer]~~
14 resident veteran business desires to be given a preference; and

15 C. the state purchasing agent shall examine the
16 application and if necessary may seek additional information or
17 proof to ~~[assure himself]~~ ensure that the prospective business
18 ~~[or manufacturer]~~ is indeed entitled to the statutory
19 preference. If all is in order, ~~[he]~~ the state purchasing
20 agent shall issue the ~~[supplier]~~ business a distinctive
21 certification number ~~[which]~~ that shall be valid until revoked
22 and ~~[which]~~, when used on bids and other purchasing documents,
23 shall entitle the business ~~[or manufacturer]~~ to the statutory
24 preference."

25 SECTION 3. Section 13-1-97.1 NMSA 1978 (being Laws 2009,

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1 Chapter 107, Section 1) is amended to read:

2 "13-1-97.1. CONTRACT DATABASE.--

3 A. The department of finance and administration,
4 the department of information technology, the department of
5 transportation and the general services department shall
6 jointly develop a database of all state contracts with a term
7 beginning on or after January 1, 2010 and having a value of
8 more than twenty thousand dollars (\$20,000) entered into
9 pursuant to the Procurement Code or otherwise within the
10 purview of any state agency. The general services department
11 shall coordinate the maintenance of the database with the
12 assistance of the other departments.

13 B. The database shall also contain:

14 (1) all outstanding invitations to bid and
15 requests for proposals issued by a state agency;

16 (2) each award made by a state agency in
17 response to a competitive sealed bid or competitive sealed
18 proposal;

19 (3) each sole source contract entered into by
20 a state agency pursuant to Section 13-1-126 NMSA 1978 and the
21 justification for the sole source;

22 (4) the records for sole source and emergency
23 procurements required by Section 13-1-128 NMSA 1978 for a state
24 agency; and

25 (5) the results of the annual audits of

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1 construction contracts required by Section 13-1-161.1 NMSA
2 1978.

3 [B-] C. The general services department shall make
4 the database available to the public on its online web site no
5 later than January 1, 2010. The database shall be searchable
6 by contractor name, subject matter, date, price or
7 consideration, contract number, amendments and other categories
8 of information that the departments identified in Subsection A
9 of this section agree are necessary to inform the public fully
10 about state contracts."

11 SECTION 4. Section 13-1-104 NMSA 1978 (being Laws 1984,
12 Chapter 65, Section 77, as amended) is amended to read:

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

14 A. An invitation for bids or a notice thereof shall
15 be published not less than ten calendar days prior to the date
16 set forth for the opening of bids. In the case of purchases
17 made by the state purchasing agent or another state agency, the
18 invitation or notice shall be published at least once in at
19 least three newspapers of general circulation in this state; in
20 addition, an invitation or notice [~~may~~] shall be published
21 electronically on the state purchasing agent's web site that is
22 maintained for that purpose and on the contract database web
23 site maintained pursuant to Section 13-1-97.1 NMSA 1978. In
24 the case of purchases made by [~~other central purchasing~~
25 ~~offices~~] local public bodies, the invitation or notice shall be

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1 published at least once in a newspaper of general circulation
2 in the area in which the [~~central purchasing office~~] local
3 public body is located, and shall be published electronically
4 on the web site of the local public body if the local public
5 body maintains such a web site. These requirements of
6 publication are in addition to any other procedures that may be
7 adopted by central purchasing offices to notify prospective
8 bidders that bids will be received, including publication in a
9 trade journal, if available. If there is no newspaper of
10 general circulation in the area in which the central purchasing
11 office is located, such other notice may be given as is
12 commercially reasonable.

13 B. Central purchasing offices shall send copies of
14 the notice or invitation for bids involving the expenditure of
15 more than twenty thousand dollars (\$20,000) to those businesses
16 that have signified in writing an interest in submitting bids
17 for particular categories of items of tangible personal
18 property, construction and services and that have paid any
19 required fees. A central purchasing office may set different
20 registration fees for different categories of services,
21 construction or items of tangible personal property, but such
22 fees shall be related to the actual, direct cost of furnishing
23 copies of the notice or invitation for bids to the prospective
24 bidders. The fees shall be used exclusively for the purpose of
25 furnishing copies of the notice or invitation for bids of

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1 proposed procurements to prospective bidders.

2 C. A central purchasing office may satisfy the
3 requirement of sending copies of a notice or invitation for
4 bids by distributing the documents to prospective bidders
5 through electronic media. Central purchasing offices shall not
6 require that prospective bidders receive a notice or invitation
7 for bids through electronic media.

8 D. As used in this section, "prospective bidders"
9 includes persons considering submission of a bid as a general
10 contractor for the construction contract and persons who may
11 submit bids to a general contractor for work to be
12 subcontracted pursuant to the construction contract. Central
13 purchasing offices shall make copies of invitations for bids
14 for construction contracts available to prospective bidders. A
15 central purchasing office may require prospective bidders who
16 have requested documents for bid on a construction contract to
17 pay a deposit for a copy of the documents for bid. The deposit
18 shall equal the full cost of reproduction and delivery of the
19 documents for bid. The deposit, less delivery charges, shall
20 be refunded if the documents for bid are returned in usable
21 condition within the time limits specified in the documents for
22 bid, which time limits shall be no less than ten calendar days
23 from the date of the bid opening. All forfeited deposits shall
24 be credited to the funds of the applicable central purchasing
25 office."

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1 SECTION 5. Section 13-1-108 NMSA 1978 (being Laws 1984,
2 Chapter 65, Section 81, as amended) is amended to read:

3 "13-1-108. COMPETITIVE SEALED BIDS--AWARD.--A contract
4 solicited by competitive sealed bids shall be awarded with
5 reasonable promptness by written notice to the lowest
6 responsible bidder. Also, after written notice to the lowest
7 responsible bidder, notice of the award shall be posted on the
8 contract database web site maintained pursuant to Section
9 13-1-97.1 NMSA 1978, if the award is made by a state agency, or
10 on the web site of the local public body, if the award is made
11 by a local public body and if the local public body maintains
12 such a web site. Contracts solicited by competitive sealed
13 bids shall require that the bid amount exclude the applicable
14 state gross receipts tax or applicable local option tax but
15 that the contracting agency shall be required to pay the
16 applicable tax, including any increase in the applicable tax
17 becoming effective after the date the contract is entered into.
18 The applicable gross receipts tax or applicable local option
19 tax shall be shown as a separate amount on each billing or
20 request for payment made under the contract."

21 SECTION 6. Section 13-1-117 NMSA 1978 (being Laws 1984,
22 Chapter 65, Section 90, as amended) is amended to read:

23 "13-1-117. COMPETITIVE SEALED PROPOSALS--AWARD.--The
24 award shall be made to the responsible offeror [~~or offerors~~]
25 whose proposal is most advantageous to the state agency or a

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1 local public body, taking into consideration the evaluation
2 factors set forth in the request for proposals. Notice of the
3 award shall be posted on the contract database web site
4 maintained pursuant to Section 13-1-97.1 NMSA 1978, if the
5 award is made by a state agency, or on the web site of the
6 local public body, if the award is made by a local public body
7 and if the local public body maintains such a web site."

8 SECTION 7. Section 13-1-126 NMSA 1978 (being Laws 1984,
9 Chapter 65, Section 99, as amended) is amended to read:

10 "13-1-126. SOLE SOURCE PROCUREMENT.--

11 A. A contract may be awarded without competitive
12 sealed bids or competitive sealed proposals regardless of the
13 estimated cost ~~[when]~~ if:

14 (1) the state purchasing agent or a central
15 purchasing office makes a determination, after conducting a
16 good-faith review of available sources and consulting the using
17 agency, that there is only one source for the required service,
18 construction or item of tangible personal property; and

19 (2) the contract and the sole source
20 justification are approved by:

21 (a) the governor if the contract is to
22 be awarded by a state agency under the control of the governor;
23 or

24 (b) the administrative head of the state
25 agency or local public body if the contract is to be awarded by

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1 a local public body or a state agency not under the control of
2 the governor.

3 B. The state purchasing agent or a central
4 purchasing office shall conduct negotiations, as appropriate,
5 as to price, delivery and quantity in order to obtain the price
6 most advantageous to the state agency or a local public body.

7 C. A contract for the purchase of research
8 consultant services by institutions of higher learning
9 constitutes a sole source procurement.

10 D. When a contract is awarded pursuant to this
11 section, the fact that the contract was sole source and the
12 justification for the sole source shall be posted:

13 (1) on the database web site maintained
14 pursuant to Section 13-1-97.1 NMSA 1978, if the contract is
15 awarded by a state agency; or

16 (2) on the web site maintained by the local
17 public body, if the contract is awarded by a local public body
18 and the local public body maintains such a web site."

19 **SECTION 8.** Section 13-1-128 NMSA 1978 (being Laws 1984,
20 Chapter 65, Section 101, as amended) is amended to read:

21 "13-1-128. SOLE SOURCE AND EMERGENCY PROCUREMENTS--
22 CONTENT AND SUBMISSION OF RECORD.--

23 A. All central purchasing offices shall maintain,
24 for a minimum of three years, records of sole source and
25 emergency procurements. The record of each such procurement

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1 shall be public record and shall contain:

2 [A.] (1) the contractor's name and address;
3 [B.] (2) the amount and term of the contract;
4 [C.] (3) a listing of the services,

5 construction or items of tangible personal property procured
6 under the contract; and

7 [D.] (4) the justification for the procurement
8 method.

9 B. The record required by Subsection A of this
10 section shall also be posted:

11 (1) on the database web site maintained
12 pursuant to Section 13-1-97.1 NMSA 1978, if the contract is
13 awarded by a state agency; or

14 (2) on the web site maintained by the local
15 public body, if the contract is awarded by a local public body
16 and the local public body maintains such a web site."

17 SECTION 9. A new section of the Procurement Code, Section
18 13-1-161.1 NMSA 1978, is enacted to read:

19 "13-1-161.1. [NEW MATERIAL] ANNUAL AUDIT OF CONSTRUCTION
20 CONTRACTS.--

21 A. During the term of the contract and for one year
22 thereafter, the department of finance and administration shall
23 annually audit or cause to be audited each contract for
24 construction entered into pursuant to the Procurement Code with
25 a value of five million dollars (\$5,000,000) or more.

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B. The annual audit shall determine:

- (1) whether the contract specifications are being followed;
- (2) whether the procedures used in awarding the contract were consistent with law;
- (3) whether the contractor and subcontractors are adequately performing the required work;
- (4) for completed projects, whether the contractor and subcontractors completed the project within the required time frame;
- (5) whether the state agency or local public body adequately administered the contract; and
- (6) whether the state agency or local public body correctly recaptured contract funds from cost overruns and related penalties incurred by the contractor or subcontractor.

C. The results of an audit conducted pursuant to this section:

- (1) shall be posted on the contract database web site maintained pursuant to Section 13-1-97.1 NMSA 1978, if the using agency is a state agency; or
- (2) shall be posted on the web site of the local public body, if the using agency is a local public body and if the local public body maintains such a web site."

SECTION 10. A new Section 13-1-200 NMSA 1978 is enacted to read:

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1 "13-1-200. [NEW MATERIAL] REAL PROPERTY LEASES--
2 REQUIREMENTS--DETERMINATION BY PROPERTY CONTROL DIVISION.--

3 A. No public entity shall enter into a contract to
4 lease real property from a private person without complying
5 with the provisions of this section, and any such contract
6 entered into without substantial compliance with the
7 requirements of this section, shall be void and unenforceable.

8 B. The following provisions of the Procurement Code
9 shall govern the procedures for entering into a contract for
10 the lease of real property between a public entity, as lessee,
11 and a private person, as lessor:

12 (1) Sections 13-1-111 through 13-1-117 NMSA
13 1978 concerning competitive sealed proposals and the posting of
14 requests for proposals and notice of awards on appropriate web
15 sites;

16 (2) Section 13-1-126 NMSA 1978 for sole source
17 contracts; and

18 (3) Section 13-1-128 NMSA 1978 for
19 recordkeeping requirements for sole source contracts and the
20 posting of the records on appropriate web sites.

21 C. Before entering into a contract for the lease of
22 real property from a private person, the public entity shall
23 submit the proposed contract to the property control division
24 of the general services department. The division shall review
25 the proposed contract and determine if the lease price to be

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1 paid under the contract is less than one hundred twenty-five
2 percent of the average price being paid for leasing similar
3 real estate under similar terms in the same area of the state.
4 No contract shall be finalized if the division determines that
5 the lease price is equal to or more than one hundred twenty-
6 five percent of the average price. The division shall maintain
7 a database of prices paid to lease real property throughout the
8 state.

9 D. Upon notice by the property control division
10 that the lease price in the proposed contract is equal to or
11 more than one hundred twenty-five percent of the average price,
12 the public entity:

13 (1) shall attempt to negotiate a lease price
14 with the proposed lessor that is less than one hundred twenty-
15 five percent of the average price;

16 (2) if unable to negotiate a lease price
17 pursuant to Paragraph (1) of this subsection, shall attempt to
18 negotiate a lease price with other responsible offerors that is
19 less than one hundred twenty-five percent of the average price;
20 and

21 (3) if unable to negotiate a lease price
22 pursuant to Paragraph (2) of this subsection or if there are no
23 other responsible offerors, shall cancel the process and issue
24 another request for proposals pursuant to the requirements of
25 this section.

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1 E. No lease of real property by a public entity
2 from a private person shall exceed a term of twenty years.

3 F. The provisions of this section are not
4 applicable to a lease purchase agreement under which the public
5 entity receives an option to purchase for a price that is
6 reduced according to the payments made pursuant to the
7 agreement.

8 G. As used in this section, "public entity" means
9 the state or any of its officers, branches, agencies,
10 institutions, instrumentalities or political subdivisions."

11 SECTION 11. Section 13-4-2 NMSA 1978 (being Laws 1984,
12 Chapter 66, Section 2, as amended) is amended to read:

13 "13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF
14 PREFERENCE.--

15 [~~A. "Resident contractor" means a New Mexico
16 resident contractor or a New York state business enterprise.~~

17 ~~B. "New Mexico]~~

18 A. As used in this section:

19 (1) "resident contractor" means any person,
20 firm, corporation or other legal entity if, at the time the
21 contract is advertised for bids and at the time bids are
22 opened, it has all required licenses and meets the following
23 requirements:

24 [~~(1)~~] (a) if the bidder is a
25 corporation, it shall be incorporated in New Mexico and

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1 maintain its principal office and place of business in New
2 Mexico;

3 ~~[(2)]~~ (b) if the bidder is a
4 partnership, general or limited, or other legal entity, it
5 shall maintain its principal office and place of business in
6 New Mexico;

7 ~~[(3)]~~ (c) if the bidder is an
8 individual, ~~[he]~~ the person shall maintain ~~[his]~~ the principal
9 office and place of the business in New Mexico; or

10 ~~[(4)]~~ (d) if a bidder who is a
11 telecommunications company as defined by Subsection M of
12 Section 63-9A-3 NMSA 1978 or an affiliate of a
13 telecommunications company has paid unemployment compensation
14 to the ~~[employment security division of the labor]~~ workforce
15 transition services division of the workforce solutions
16 department at the applicable experience rate for that employer
17 pursuant to the Unemployment Compensation Law on no fewer than
18 ten employees who have performed services subject to
19 contributions for the two-year period prior to issuance of
20 notice to bid, the bidder will be considered to have fulfilled
21 the requirements of ~~[Paragraph (1), (2) or (3) of this~~
22 subsection] Subparagraph (a), (b) or (c) of this paragraph. A
23 successor to a previously qualified ~~[New Mexico contractor or]~~
24 resident contractor, where the creation of the bidder resulted
25 from a court order, is entitled to credit for qualifying

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1 contributions paid by the previously qualified [~~New Mexico~~
2 ~~contractor or~~] resident contractor;

3 [C. ~~"New York state business enterprise" means a~~
4 ~~business enterprise, including a sole proprietorship,~~
5 ~~partnership or corporation, that offers for sale or lease or~~
6 ~~other form of exchange, goods or commodities that are~~
7 ~~substantially manufactured, produced or assembled in New York~~
8 ~~state, or services, other than construction services, that are~~
9 ~~substantially performed within New York state. For purposes of~~
10 ~~construction services, a New York state business enterprise~~
11 ~~means a business enterprise, including a sole proprietorship,~~
12 ~~partnership or corporation, that has its principal place of~~
13 ~~business in New York state.~~

14 D. ~~For purposes of this section]~~

15 (2) "affiliate" means an entity that directly
16 or indirectly through one or more intermediaries controls, is
17 controlled by or is under common control with a
18 telecommunications company through ownership of voting
19 securities representing a majority of the total voting power of
20 that entity; and

21 [E. ~~When bids are received only from nonresident~~
22 ~~contractors and resident contractors and the lowest responsible~~
23 ~~bid is from a nonresident contractor, the contract shall be~~
24 ~~awarded to the resident contractor whose bid is nearest to the~~
25 ~~bid price of the otherwise low nonresident contractor if the~~

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1 ~~bid price of the resident contractor is made lower than the bid~~
2 ~~price of the nonresident contractor when multiplied by a factor~~
3 ~~of .95]~~

4 (3) "resident veteran contractor" means a
5 resident contractor, the majority ownership of which is held by
6 New Mexico residents who have been honorably discharged from
7 membership in the armed forces of the United States.

8 B. When bids are received, each bid price submitted
9 by a bidder that is not a resident contractor shall be
10 multiplied by 1.0, each bid price submitted by a resident
11 contractor that is not a resident veteran contractor shall be
12 multiplied by 0.9 and each bid price submitted by a resident
13 veteran contractor shall be multiplied by 0.85. After the
14 multiplications, the contract shall be awarded to the bidder
15 whose bid price yields the lowest result.

16 ~~[F.]~~ C. No contractor shall be treated as a
17 resident contractor or a resident veteran contractor in the
18 awarding of public works contracts by a state agency or a local
19 public body unless the contractor has qualified with the state
20 purchasing agent as a resident contractor or a resident veteran
21 contractor pursuant to this section by making application to
22 the state purchasing agent and receiving from ~~[him]~~ the state
23 purchasing agent a certification number. The procedure for
24 application and certification is as follows:

25 (1) the state purchasing agent shall prepare

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1 an application form for certification as a resident contractor
2 or a resident veteran contractor, requiring such information
3 and proof as [~~he deems~~] necessary to qualify the applicant
4 under the terms of this section;

5 (2) the contractor seeking to qualify as a
6 resident contractor or a resident veteran contractor shall
7 complete the application form and submit it to the state
8 purchasing agent prior to the submission of a bid on which the
9 contractor desires to be given a preference;

10 (3) the state purchasing agent shall examine
11 the application and if necessary may seek additional
12 information or proof so as to be assured that the prospective
13 contractor is indeed entitled to certification as a resident
14 contractor or a resident veteran contractor. If the
15 application is in proper form, the state purchasing agent shall
16 issue the contractor a distinctive certification number [~~which~~]
17 that is valid until revoked and [~~which~~] when used on bids and
18 other purchasing documents for state agencies or local public
19 bodies, entitles the contractor to treatment as a resident
20 contractor or a resident veteran contractor under Subsection
21 [E] B of this section; and

22 (4) the certification number issued pursuant
23 to Paragraph (3) of this subsection shall be revoked by the
24 state purchasing agent upon making a determination that the
25 contractor no longer meets the requirements of a resident

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1 contractor or a resident veteran contractor as defined in this
2 section."

3 SECTION 12. Section 15-3B-4 NMSA 1978 (being Laws 1978,
4 Chapter 166, Section 14, as amended by Laws 2001, Chapter 293,
5 Section 1 and by Laws 2001, Chapter 319, Section 4) is amended
6 to read:

7 "15-3B-4. DIVISION--DUTIES--FEDERAL FUNDS.--

8 A. The division shall:

9 (1) assign the use or occupancy of state
10 buildings and lands under its jurisdiction to the state agency
11 or political subdivision that may make the best and highest
12 beneficial use of the property;

13 (2) regulate the use or occupancy of buildings
14 and real property under its jurisdiction and make reasonable
15 requirements for the continuation of that use or occupancy;

16 (3) establish space standards for buildings
17 under its jurisdiction;

18 (4) have custody of all maps, deeds, plats,
19 plans, specifications, contracts, books and other papers
20 connected with state buildings under its jurisdiction;

21 (5) secure copies of all documents of title to
22 all real property under its jurisdiction held in the name of
23 the state or for the use of the state, and index those
24 documents so that the status of real property held by the state
25 under its jurisdiction can be readily ascertained;

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1 (6) control the lease or rental of space in
2 private buildings by state executive agencies other than the
3 state land office, including inspection for code compliance and
4 life and safety issues. The director may act as lessee on
5 behalf of a state agency if the division determines it is in
6 the best interest of the state and if the lease is entered into
7 pursuant to the provisions of Section 13-1-200 NMSA 1978;

8 (7) make rules for the conduct of all persons
9 in and about buildings and grounds under its jurisdiction
10 necessary and proper for the safety, care and preservation of
11 the buildings and grounds and for the safety and convenience of
12 the persons while they are in and about the buildings and
13 grounds;

14 (8) have the power to sell state buildings and
15 real property under its jurisdiction in accordance with
16 Sections 13-6-2 and 13-6-3 NMSA 1978. Any such sale shall be
17 by quitclaim deed;

18 (9) have the power to purchase title insurance
19 or a title opinion in conjunction with the sale of state
20 buildings or land;

21 (10) have the power to enter into contracts
22 for the improvement, alteration and reconstruction of the state
23 buildings under its jurisdiction, including the governor's
24 residence, and for the design and construction of additional
25 buildings, to the extent funds are available;

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1 (11) develop long-range programs for the
2 continuing preservation and repair of buildings and
3 improvements and for beautification of grounds and premises
4 under its jurisdiction;

5 (12) conduct continuing review and analysis of
6 requirements for additional structures and facilities to house
7 state agencies;

8 (13) ensure that on-site inspections of
9 capital projects are conducted to verify that construction
10 specifications are being met; ~~and~~

11 (14) maintain a database of lease prices for
12 real estate throughout the state as required by Subsection C of
13 Section 13-1-200 NMSA 1978 and review proposed leases to make
14 the determinations required by that subsection; and

15 [~~14~~] (15) receive gifts, grants and
16 donations from the federal government or other sources for the
17 public buildings repair fund.

18 B. The provisions of this section are subject to
19 federal law or rules if the buildings or property ~~was~~ were
20 purchased with federal funds.

21 C. The division and a state agency or institution
22 that controls property exempt from the jurisdiction of the
23 division may enter into a joint powers agreement pursuant to
24 the Joint Powers Agreements Act giving the division the power
25 to exercise control of the property as specified in the

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1 agreement."

2 SECTION 13. TEMPORARY PROVISION--PROHIBITING EXPENDITURES
3 UNDER EXISTING LEASES--PROVIDING FOR TEMPORARY WAIVERS.--

4 A. Unless a temporary waiver has been granted
5 pursuant to Subsection C of this section, and if allowed under
6 the lease contract, as soon as feasible after July 1, 2011,
7 each public entity with an existing lease contract for the
8 lease of real property from a private person shall terminate
9 the lease contract. If necessary, the public entity may enter
10 into a subsequent lease contract pursuant to the provisions of
11 Section 13-1-200 NMSA 1978.

12 B. Except for temporary waivers allowed pursuant to
13 Subsection C of this section, on or after July 1, 2012, no
14 public entity shall expend public money for the lease of real
15 property from a private person unless the lease is entered into
16 pursuant to the provisions of Section 13-1-200 NMSA 1978.

17 During fiscal year 2012, each public entity with an existing
18 lease contract for the lease of real property from a private
19 person that was entered into prior to July 1, 2011 and not
20 terminated pursuant to Subsection A of this section shall
21 notify the lessor of the requirements of this subsection and
22 that the lease will be terminated no later than July 1, 2012
23 but that another lease may be entered into pursuant to Section
24 13-1-200 NMSA 1978.

25 C. For good cause, the governor, if the lease is

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1 held by a public entity under the control of the governor, or
2 the administrative head of a public entity, if the lease is
3 held by a public entity not under the control of the governor,
4 may grant a temporary waiver from a requirement of Subsection A
5 or B of this section if:

6 (1) the requirement is waived for a period of
7 one hundred eighty days or less; and

8 (2) the waiver and the justification for the
9 waiver is posted:

10 (a) on the database web site maintained
11 pursuant to Section 13-1-97.1 NMSA 1978, if the public entity
12 is a state agency; or

13 (b) on the web site maintained by the
14 public entity, if the public entity is not a state agency and
15 if the public entity maintains such a web site.

16 D. As used in this section, "public entity" means
17 the state or any of its officers, branches, agencies,
18 institutions, instrumentalities or political subdivisions.

19 **SECTION 14. TEMPORARY PROVISION--PROHIBITING EXPENDITURES**
20 **UNDER EXISTING PROCUREMENT CONTRACTS--PROVIDING FOR TEMPORARY**
21 **WAIVERS.--**

22 A. Unless a temporary waiver has been granted
23 pursuant to Subsection C of this section, as soon as feasible
24 after July 1, 2011, and if allowed under the procurement
25 contract, each public entity with an existing contract for the

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1 procurement of items of tangible personal property, services or
2 construction shall terminate the contract. If necessary, the
3 public entity may enter into a subsequent contract pursuant to
4 the provisions of the Procurement Code.

5 B. Except for temporary waivers allowed pursuant to
6 Subsection C of this section, on or after July 1, 2012, no
7 public entity shall expend public money for the procurement of
8 items of tangible personal property, services or construction
9 unless the procurement contract is entered into pursuant to the
10 provisions of the Procurement Code after July 1, 2011. During
11 fiscal year 2012, each public entity with an existing
12 procurement contract for the procurement of items of tangible
13 personal property, services or construction that was entered
14 into prior to July 1, 2011 and not terminated pursuant to
15 Subsection A of this section shall notify the contractor of the
16 requirements of this subsection and that the contract will be
17 terminated no later than July 1, 2012 but that another contract
18 may be entered into pursuant to the Procurement Code on or
19 after July 1, 2011.

20 C. For good cause, the governor, if the procurement
21 contract has been entered into by a public entity under the
22 control of the governor, or the administrative head of a public
23 entity, if the procurement contract has been entered into by a
24 public entity not under the control of the governor, may grant
25 a temporary waiver from a requirement of Subsection A or B of

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1 this section if:

2 (1) the requirement is waived for a period of
3 one hundred eighty days or less; and

4 (2) the waiver and the justification for the
5 waiver is posted:

6 (a) on the database web site maintained
7 pursuant to Section 13-1-97.1 NMSA 1978, if the public entity
8 is a state agency; or

9 (b) on the web site maintained by the
10 public entity, if the public entity is not a state agency and
11 if the public entity maintains such a web site.

12 D. As used in this section, "public entity" means
13 the state or any of its officers, branches, agencies,
14 institutions, instrumentalities or political subdivisions.

15 SECTION 15. REPEAL.--Laws 2001, Chapter 293, Section 1 is
16 repealed.

17 SECTION 16. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2011.

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