

1 SENATE BILL 53

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Bill B. O'Neill

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9
10 AN ACT

11 RELATING TO PROCUREMENT; CREATING PREFERENCES AND CERTIFICATION
12 REQUIREMENTS FOR RESIDENT MINORITY BUSINESSES AND RESIDENT
13 TRIBAL BUSINESSES; RETAINING THE RESIDENT VETERAN BUSINESS
14 PREFERENCE; AUTHORIZING PROCUREMENTS FOR EXCLUSIVE BIDDING BY
15 NEW MEXICO BUSINESSES OR SMALL BUSINESSES; ADDING AND REVISING
16 DEFINITIONS IN THE PROCUREMENT CODE; SPECIFYING WHEN THE
17 NEGOTIATION PROCESS ENDS; CLARIFYING ELECTRONIC SUBMISSION
18 REQUIREMENTS; ALLOWING VIRTUAL BID OPENINGS; REVISING CHIEF
19 PROCUREMENT OFFICER REGISTRATION REQUIREMENTS; CLARIFYING
20 REPORTING REQUIREMENTS FOR IN-STATE AND OUT-OF-STATE CONTRACTS;
21 APPLYING THE PROCUREMENT CODE TO MARKETING; ALLOWING THE
22 REJECTION OF IDENTICAL LOW BIDS BASED ON THE APPEARANCE OF NON-
23 INDEPENDENT BIDDING; SPECIFYING POSTING REQUIREMENTS FOR
24 EMERGENCY PROCUREMENT; PRESCRIBING REQUIREMENTS FOR PURCHASES
25 OF SUSTAINABLE AND RECYCLED CONTENT GOODS; AUTHORIZING AUDITS

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1 RELATED TO SALES UNDER A CONTRACT; DEFINING OFFERORS FOR
2 PURPOSES OF PROTESTING AN AWARD; REQUIRING REPORTING ON
3 CONTRACTS AWARDED TO NEW MEXICO BUSINESSES; ALLOWING THE
4 PURCHASE OF ELECTRIC AND GAS-ELECTRIC HYBRID VEHICLES MADE
5 OUTSIDE NORTH AMERICA; AMENDING, REPEALING AND ENACTING
6 SECTIONS OF THE NMSA 1978.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

11 "13-1-21. APPLICATION OF PREFERENCES.--

12 A. For the purposes of this section:

13 (1) "bid" means a submission by a prospective
14 supplier in response to a solicitation involving a formal bid
15 process, where all bids are submitted wholly independent of
16 each other in a competitive manner;

17 [~~(1)~~] (2) "business" means a commercial
18 enterprise carried on for the purpose of selling goods or
19 services, including growing, producing, processing or
20 distributing agricultural products;

21 [~~(2)~~] (3) "formal bid process" means a
22 competitive bid process;

23 [~~(3)~~] (4) "formal request for proposals
24 process" means a competitive proposal process, including a
25 competitive qualifications-based proposal process;

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1 [~~(4)~~] (5) "public body" means a department,
2 commission, council, board, committee, institution, legislative
3 body, agency, government corporation, educational institution
4 or official of the executive, legislative or judicial branch of
5 the government of the state or a political subdivision of the
6 state and the agencies, instrumentalities and institutions
7 thereof, including two-year post-secondary educational
8 institutions, school districts, local school boards and all
9 municipalities, including home-rule municipalities;

10 [~~(5)~~] (6) "recycled content goods" means
11 supplies and materials composed twenty-five percent or more of
12 recycled materials or sustainable materials, as determined by
13 the general services department; provided that the recycled
14 materials content meets or exceeds the minimum content
15 standards required by bid specifications;

16 [~~(6)~~] (7) "resident business" means a business
17 that has a valid resident business certificate issued by the
18 taxation and revenue department pursuant to Section 13-1-22
19 NMSA 1978 but does not include a resident veteran business
20 [~~and~~], resident minority business or resident tribal business;

21 (8) "resident tribal business" means a
22 business that has a valid resident tribal business certificate
23 issued by the taxation and revenue department pursuant to
24 Section 13-1-22 NMSA 1978;

25 (9) "resident minority business" means a

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1 business that has a valid resident minority business
2 certificate issued by the taxation and revenue department
3 pursuant to Section 13-1-22 NMSA 1978; and

4 [~~(7)~~] (10) "resident veteran business" means a
5 business that has a valid resident veteran business certificate
6 issued by the taxation and revenue department pursuant to
7 Section 13-1-22 NMSA 1978.

8 B. Except as provided in Subsection C of this
9 section, when a public body makes a purchase using a formal bid
10 process, the public body shall deem a bid submitted by a:

11 (1) resident business, resident minority
12 business or resident tribal business to be favored with a five
13 percent [~~lower than~~] advantage over the bid actually submitted;
14 or

15 (2) resident veteran business with annual
16 gross revenues of up to three million dollars (\$3,000,000) in
17 the preceding tax year to be favored with a ten percent [~~lower~~
18 ~~than~~] advantage over the bid actually submitted.

19 C. When a public body makes a purchase using a
20 formal bid process and the bids are received for both recycled
21 content goods and nonrecycled content goods, the public body
22 shall deem:

23 (1) bids submitted for recycled content goods
24 from any business, except a resident veteran business, to be
25 favored with a five percent [~~lower than~~] advantage over the

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1 bids actually submitted; or

2 (2) bids submitted for recycled content goods
3 from a resident veteran business with annual gross revenues of
4 up to three million dollars (\$3,000,000) in the preceding tax
5 year to be favored with a ten percent [lower than] advantage
6 over the bids actually submitted.

7 D. When a public body makes a purchase using a
8 formal request for proposals process, not including contracts
9 awarded on a point-based system, the public body shall award an
10 additional:

11 (1) five percent of the total weight of all
12 the factors used in evaluating the proposals to a resident
13 business, [~~and~~] resident minority business or resident tribal
14 business; or

15 (2) ten percent of the total weight of all the
16 factors used in evaluating the proposals to a resident veteran
17 business that has annual gross revenues of up to three million
18 dollars (\$3,000,000) in the preceding tax year.

19 E. When a public body makes a purchase using a
20 formal request for proposals process, and the contract is
21 awarded based on a point-based system, the public body shall
22 award additional points equivalent to:

23 (1) five percent of the total possible points
24 to a resident business, resident minority business or resident
25 tribal business; or

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1 (2) ten percent of the total possible points
2 to a resident veteran business that has annual gross revenues
3 of up to three million dollars (\$3,000,000) in the preceding
4 tax year.

5 F. When a joint bid or joint proposal is submitted
6 by a combination of resident veteran, resident or nonresident,
7 resident minority or resident tribal businesses the preference
8 provided pursuant to Subsection B, C, D or E of this section
9 shall be calculated in proportion to the percentage of the
10 contract, based on the dollar amount of the goods or services
11 provided under the contract, that will be performed by each
12 business as specified in the joint bid or proposal.

13 G. A resident veteran business, resident minority
14 business or resident tribal business shall not benefit from the
15 preference pursuant to this section for more than ten
16 consecutive years. A person that is an owner of a business
17 that is a resident veteran business, resident minority business
18 or resident tribal business shall not benefit from the
19 preference pursuant to this section for more than ten
20 consecutive years. A person shall not benefit from the
21 provisions of this section based on more than one business
22 concurrently.

23 H. A public body shall not award a business [~~both a~~
24 ~~resident business preference and a resident veteran business~~
25 ~~preference~~] more than one preference pursuant to this section.

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1 I. The procedures provided in Sections 13-1-172
2 through 13-1-183 NMSA 1978 or in an applicable purchasing
3 ordinance apply to a protest to a public body concerning the
4 awarding of a contract in violation of this section.

5 J. This section shall not apply when the
6 expenditure includes federal funds for a specific purchase."

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

9 "13-1-22. CERTIFICATIONS--RESIDENT BUSINESS, RESIDENT
10 VETERAN BUSINESS, RESIDENT MINORITY BUSINESS, RESIDENT TRIBAL
11 BUSINESS, RESIDENT CONTRACTOR AND RESIDENT VETERAN CONTRACTOR
12 [CERTIFICATION].--

13 A. To receive a resident business, [~~or~~] resident
14 veteran business, resident minority business or resident tribal
15 business preference pursuant to Section 13-1-21 NMSA 1978 or a
16 resident contractor or resident veteran contractor preference
17 pursuant to Section 13-4-2 NMSA 1978, a business or contractor
18 shall submit with its bid or proposal a copy of [~~a valid~~
19 ~~resident business certificate, valid resident veteran business~~
20 ~~certificate, valid resident contractor certificate, or valid~~
21 ~~resident veteran contractor~~] the certificate issued by the
22 taxation and revenue department to the business or contractor
23 pursuant to this section.

24 B. An application for a resident business
25 certificate shall include an affidavit from a certified public

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1 accountant setting forth that the business is licensed to do
2 business in this state and that:

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

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

14 (3) if the business is a relocated business,
15 at least eighty percent of the total personnel of the business
16 in the year immediately preceding the submission of the
17 affidavit were residents of the state and that, prior to the
18 submission of the affidavit, the business either leased real
19 property for ten years or purchased real property greater than
20 one hundred thousand dollars (\$100,000) in value in the state;
21 or

22 (4) if the business is a previously certified
23 business or was eligible for certification, the business has
24 changed its name, has reorganized into one or more different
25 legal entities, was purchased by another legal entity but

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1 operates in the state as substantially the same commercial
2 enterprise or has merged with a different legal entity but
3 operates in the state as substantially the same commercial
4 enterprise.

5 C. An application for a resident veteran business
6 certificate shall include the affidavit required by Subsection
7 B of this section, an affidavit from a certified public
8 accountant providing the previous year's annual revenues of the
9 resident veteran business and:

10 (1) verification by the federal department of
11 veterans affairs as being either a veteran-owned small business
12 or a service-disabled veteran-owned small business; or

13 (2) verification of veteran status as
14 indicated by the United States department of defense DD form
15 214 of release or discharge from active duty with an honorable
16 discharge or of service-disabled veteran status by the
17 department of veterans affairs and proof that a veteran or
18 veterans own a majority of the business.

19 D. An application for a resident minority business
20 certificate shall include:

21 (1) the affidavit required by Subsection B of
22 this section; and

23 (2) verification, as prescribed by the
24 taxation and revenue department, that more than fifty percent
25 of the business is owned by women or persons who identify as

1 African American, Latino or Hispanic, Asian, Pacific Islander,
2 Native American or Alaska native.

3 E. An application for a resident tribal business
4 certificate shall include:

5 (1) an affidavit setting forth that the
6 business' principal place of business is on tribal land within
7 the boundaries of New Mexico; and

8 (2) verification, as prescribed by the
9 taxation and revenue department, that:

10 (a) the business is wholly owned by a
11 federally recognized Indian nation, tribe or pueblo located
12 wholly or partially in New Mexico, including a political
13 subdivision, agency or department of the Indian nation, tribe
14 or pueblo;

15 (b) the business is an incorporated or
16 unincorporated enterprise of a federally recognized Indian
17 nation, tribe or pueblo located wholly or partially in New
18 Mexico;

19 (c) more than fifty percent of the
20 business is owned by persons who are enrolled members of a
21 federally recognized Indian nation, tribe or pueblo located
22 wholly or partially in New Mexico; or

23 (d) the business is a corporation
24 considered to be an Indian nation, tribe or pueblo, located
25 wholly or partially in New Mexico, by the federal government or

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1 the state.

2 [~~D~~] F. An application for a resident contractor
3 certificate shall include an affidavit from a certified public
4 accountant setting forth that the contractor is currently
5 licensed as a contractor in this state and that:

6 (1) the contractor has:

7 (a) registered with the state at least
8 one vehicle; and

9 (b) in each of the five years
10 immediately preceding the submission of the affidavit: 1) paid
11 property taxes or rent on real property in the state and paid
12 at least one other tax administered by the state; and 2) paid
13 unemployment insurance on at least three full-time employees
14 who are residents of the state; provided that if a contractor
15 is a legacy contractor, the requirement of at least three full-
16 time employees who are residents of the state is waived;

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

24 (3) if the contractor is a relocated business,
25 at least eighty percent of the total personnel of the business

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1 in the year immediately preceding the submission of the
2 affidavit were residents of the state and that, prior to the
3 submission of the affidavit, the contractor either leased real
4 property for ten years or purchased real property greater than
5 one hundred thousand dollars (\$100,000) in value in the state;
6 or

7 (4) if the contractor is a previously
8 certified contractor or was eligible for certification, the
9 contractor has changed its name, has reorganized into one or
10 more different legal entities, was purchased by another legal
11 entity but operates in the state as substantially the same
12 enterprise or has merged with a different legal entity but
13 operates in the state as substantially the same commercial
14 enterprise.

15 [~~E.~~] G. An application for a resident veteran
16 contractor certificate shall include the affidavit required by
17 Subsection [~~D.~~] F. of this section, an affidavit from a certified
18 public accountant providing the previous year's annual revenues
19 for the resident veteran contractor and:

20 (1) verification by the federal department of
21 veterans affairs as being either a veteran-owned small business
22 or a service-disabled veteran-owned small business; or

23 (2) verification of veteran status as
24 indicated by the United States department of defense DD form
25 214 of release or discharge from active duty with an honorable

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1 discharge or of service-disabled veteran status by the
2 department of veterans affairs and proof that a veteran or
3 veterans own a majority of the business.

4 ~~[F.]~~ H. The taxation and revenue department shall
5 prescribe the form and content of an application for
6 certification and required affidavit. The taxation and revenue
7 department shall examine the application and affidavit and, if
8 necessary, may seek additional information to ensure that the
9 business or contractor is eligible to receive the certificate
10 pursuant to the provisions of this section. If the taxation
11 and revenue department determines that an applicant is
12 eligible, the department shall issue a certificate pursuant to
13 the provisions of this section. If the taxation and revenue
14 department determines that the applicant is not eligible, the
15 department shall issue notification within thirty days. If no
16 notification is provided by the department, the certificate is
17 deemed approved. A certificate is valid for three years from
18 the date of its issuance; provided that if there is a change of
19 ownership of more than fifty percent, a ~~[resident]~~ business
20 ~~[resident veteran business, resident contractor, or resident~~
21 ~~veteran contractor]~~ shall reapply for a certificate.

22 ~~[G.]~~ I. A business or contractor whose application
23 for a certificate is denied has fifteen days from the date of
24 the taxation and revenue department's decision to file an
25 objection with the taxation and revenue department. The person

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1 filing the objection shall submit evidence to support the
2 objection. The taxation and revenue department shall review
3 the evidence and issue a decision within fifteen days of the
4 filing of the objection.

5 ~~[H.]~~ J. If, following a hearing and an opportunity
6 to be heard, the administrative hearings office finds that a
7 business or contractor provided false information to the
8 taxation and revenue department in order to obtain a
9 certificate pursuant to this section or that a business or
10 contractor used a certificate to obtain a [~~resident business,~~
11 ~~resident veteran business, resident contractor or resident~~
12 ~~veteran contractor~~] preference for a bid or proposal and the
13 [~~resident business, resident veteran business, resident~~
14 ~~contractor or resident veteran~~] business or contractor did not
15 perform the percentage of the contract specified in the bid or
16 proposal, the business or contractor:

17 (1) is not eligible to receive a certificate
18 or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA 1978
19 for a period of five years from the date on which the taxation
20 and revenue department became aware of the submission of the
21 false information or the failure to perform the contract as
22 specified in the bid or proposal; and

23 (2) is subject to an administrative penalty of
24 up to fifty thousand dollars (\$50,000) for each violation.

25 ~~[I.]~~ K. In a decision issued pursuant to Subsection

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1 ~~[G or H]~~ I or J of this section, the taxation and revenue
2 department or administrative hearings office shall state the
3 reasons for the action taken and inform an aggrieved business
4 or contractor of the right to judicial review of the
5 determination pursuant to the provisions of Section 39-3-1.1
6 NMSA 1978.

7 ~~[J.]~~ L. The taxation and revenue department may
8 assess a reasonable fee for the issuance of a certificate not
9 to exceed the actual cost of administering the taxation and
10 revenue department's duties pursuant to this section.

11 ~~[K.]~~ M. The state auditor may audit or review the
12 issuance or validity of certificates.

13 ~~[L.]~~ N. For purposes of this section:

14 (1) "new business" means a person that did not
15 exist as a business in any form and that has been in existence
16 for less than three years;

17 (2) "new contractor" means a person that did
18 not exist as a business in any form and that has been in
19 existence for less than five years;

20 (3) "legacy contractor" means a construction
21 business that has been licensed in this state for ten
22 consecutive years; and

23 (4) "relocated business" means a business that
24 moved eighty percent of its total domestic personnel from
25 another state to New Mexico in the past five years."

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1 SECTION 3. A new section of the Procurement Code is
2 enacted to read:

3 "[NEW MATERIAL] NEW MEXICO BUSINESSES--EXCLUSIVE
4 PROCUREMENTS AUTHORIZED.--The state purchasing agent or a
5 central purchasing office may design procurements to
6 exclusively receive proposals, bids or responses from New
7 Mexico businesses."

8 SECTION 4. A new section of the Procurement Code is
9 enacted to read:

10 "[NEW MATERIAL] DEFINITION--ADVERTISING.--"Advertising"
11 means the promotion of a product or service through paid media
12 and does not include marketing."

13 SECTION 5. A new section of the Procurement Code is
14 enacted to read:

15 "[NEW MATERIAL] DEFINITION--EVALUATION FACTORS.--
16 "Evaluation factors" means the factors stated in the request
17 for proposals that are used by evaluators to determine which
18 competing proposal is most advantageous to the procuring state
19 agency or local public body."

20 SECTION 6. A new section of the Procurement Code is
21 enacted to read:

22 "[NEW MATERIAL] DEFINITION--MARKETING.--"Marketing" means
23 the process of identifying agency needs and determining how
24 best to meet those needs, including any element of the process
25 such as creation, research, design, planning or data mining."

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1 SECTION 7. A new section of the Procurement Code is
2 enacted to read:

3 "[NEW MATERIAL] DEFINITION--NEGOTIATION PROCESS.--
4 "Negotiation process" means the actions taken to obtain a best
5 and final offer between the parties to an awarded contract
6 before the contract is fully executed."

7 SECTION 8. Section 13-1-37 NMSA 1978 (being Laws 1984,
8 Chapter 65, Section 10, as amended) is amended to read:

9 "13-1-37. DEFINITION--CENTRAL PURCHASING OFFICE.--
10 "Central purchasing office" means that office, entity, bureau
11 or purchasing staff within a state agency or a local public
12 body responsible for the control of procurement of items of
13 tangible personal property, professional services, general
14 services or construction [~~"Central purchasing office"~~] and
15 includes the purchasing division of the general services
16 department."

17 SECTION 9. Section 13-1-95.1 NMSA 1978 (being Laws 2001,
18 Chapter 292, Section 7, as amended) is amended to read:

19 "13-1-95.1. ELECTRONIC TRANSMISSIONS.--
20 A. The state purchasing agent shall develop
21 guidelines for central purchasing offices to use electronic
22 media, including distribution of solicitations and acceptance
23 of sealed bids and competitive sealed proposals that include
24 electronic signatures. The guidelines shall include:

25 (1) appropriate security to prevent

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1 unauthorized access to electronically submitted bids or
2 proposals prior to the date and time set for opening of bids or
3 the deadline set for receipt for proposals, including the
4 electronic bidding, approval and award process; and

5 (2) accurate retrieval or conversion of
6 electronic forms of information into a medium that permits
7 inspection and copying.

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

14 (1) no hard copy documentation shall be
15 submitted to the central purchasing office prior to the award
16 of the contract, except as specifically identified in the
17 invitation for bids or the request for proposals;

18 (2) the invitation for bids or request for
19 proposals shall specify an opening date and time, a fixed
20 closing date and time and ~~[an email account or other]~~ a secure
21 electronic location to which the electronic bid or proposal
22 shall be submitted; provided that the process of uploading and
23 submitting the electronic bid or proposal shall be completed in
24 full no later than the fixed closing date and time;

25 (3) sealed bids submitted electronically shall

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1 be opened publicly in the presence of one or more witnesses at
2 the time and place designated in the invitation for bids,
3 including virtual openings conducted by video conferencing.

4 The amount of each bid and each bid item, if appropriate, and
5 such other relevant information as may be specified by the
6 state purchasing agent or a central purchasing office, together
7 with the name of each bidder, shall be recorded, and the record
8 and each bid shall be open to public inspection; and

9 (4) for sealed proposals, the proposals shall
10 be opened, evaluated and the contract awarded as required in
11 the request for proposals and as otherwise provided in the
12 Procurement Code."

13 SECTION 10. Section 13-1-95.2 NMSA 1978 (being Laws 2013,
14 Chapter 70, Section 3) is amended to read:

15 "13-1-95.2. CHIEF PROCUREMENT OFFICERS--REPORTING
16 REQUIREMENT--TRAINING--CERTIFICATION.--

17 A. [~~On or before January 1 of each year beginning~~
18 ~~in 2014, and every time]~~ When a chief procurement officer is
19 hired, each state agency and local public body shall provide to
20 the state purchasing agent the name of the state agency's or
21 local public body's chief procurement officer and information
22 identifying the state agency's or local public body's central
23 purchasing office, if applicable, and shall register the chief
24 procurement officer on the purchasing division website along
25 with updated information, as needed. Corrective action to

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1 update information, registration and replacement of chief
2 procurement officers is the responsibility of each state agency
3 and local public body.

4 B. The state purchasing agent shall maintain a list
5 of the names of the chief procurement officers reported to the
6 state purchasing agent by state agencies and local public
7 bodies. The state purchasing agent shall make the list of
8 chief procurement officers available to the public through the
9 [~~web site~~] website of the purchasing division of the general
10 services department and in any other appropriate form.

11 C. The state purchasing agent shall offer a
12 certification training program for chief procurement officers
13 each year.

14 D. On or before January 1, 2015, the state
15 purchasing agent shall establish a certification program for
16 chief procurement officers that includes initial certification
17 and recertification every two years for all chief procurement
18 officers. In order to be recertified, a chief procurement
19 officer shall pass a recertification examination approved by
20 the secretary of general services.

21 E. On and after July 1, 2015, only certified chief
22 procurement officers may do the following, except that persons
23 using procurement cards may continue to issue purchase orders
24 and authorize small purchases:

- 25 (1) make determinations, including

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1 determinations regarding exemptions, pursuant to the
2 Procurement Code;

3 (2) issue purchase orders and authorize small
4 purchases pursuant to the Procurement Code; and

5 (3) approve procurement pursuant to the
6 Procurement Code."

7 SECTION 11. Section 13-1-95.3 NMSA 1978 (being Laws 2019,
8 Chapter 153, Section 1) is amended to read:

9 "13-1-95.3. STATE AGENCY--REPORTING REQUIRED--IN-STATE
10 AND OUT-OF-STATE CONTRACTS.--All state agencies shall report
11 annually to the purchasing division of the general services
12 department [~~information on~~] the total number and corresponding
13 total dollar amount of state agency contracts awarded to in-
14 state contractors and the total number and corresponding total
15 dollar amount of state agency contracts awarded to out-of-state
16 contractors. As used in this section, "contracts" does not
17 include purchase orders."

18 SECTION 12. Section 13-1-98 NMSA 1978 (being Laws 1984,
19 Chapter 65, Section 71, as amended by Laws 2019, Chapter 48,
20 Section 13 and by Laws 2019, Chapter 63, Section 1) is amended
21 to read:

22 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
23 provisions of the Procurement Code shall not apply to:

24 A. procurement of items of tangible personal
25 property or services by a state agency or a local public body

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1 from a state agency, a local public body or external
2 procurement unit except as otherwise provided in Sections
3 13-1-135 through 13-1-137 NMSA 1978;

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

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

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

13 E. purchases of books, periodicals and training
14 materials in printed or electronic format from the publishers
15 or copyright holders thereof and purchases of print, digital or
16 electronic format library materials by public, school and state
17 libraries for access by the public;

18 F. travel or shipping by common carrier or by
19 private conveyance or to meals and lodging;

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

23 H. contracts with businesses for public school
24 transportation services;

25 I. procurement of tangible personal property or

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1 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
2 by the corrections industries division of the corrections
3 department pursuant to rules adopted by the corrections
4 industries commission, which shall be reviewed by the
5 purchasing division of the general services department prior to
6 adoption;

7 J. purchases not exceeding ten thousand dollars
8 (\$10,000) consisting of magazine subscriptions, web-based or
9 electronic subscriptions, conference registration fees and
10 other similar purchases where prepayments are required;

11 K. municipalities having adopted home rule charters
12 and having enacted their own purchasing ordinances;

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

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

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

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1 provide services to persons with handicaps;

2 O. contracts and expenditures for services or items
3 of tangible personal property to be paid or compensated by
4 money or other property transferred to New Mexico law
5 enforcement agencies by the United States department of justice
6 drug enforcement administration;

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

9 Q. contracts with professional entertainers;

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

16 S. contracts for service relating to the design,
17 engineering, financing, construction and acquisition of public
18 improvements undertaken in improvement districts pursuant to
19 Subsection L of Section 3-33-14.1 NMSA 1978 and in county
20 improvement districts pursuant to Subsection L of Section
21 4-55A-12.1 NMSA 1978;

22 T. works of art for museums or for display in
23 public buildings or places;

24 U. contracts entered into by a local public body
25 with a person, firm, organization, corporation or association

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1 or a state educational institution named in Article 12, Section
2 11 of the constitution of New Mexico for the operation and
3 maintenance of a hospital pursuant to Chapter 3, Article 44
4 NMSA 1978, lease or operation of a county hospital pursuant to
5 the Hospital Funding Act or operation and maintenance of a
6 hospital pursuant to the Special Hospital District Act;

7 V. purchases of advertising in all media, including
8 radio, television, print and electronic. The Procurement Code
9 shall apply to marketing;

10 W. purchases of promotional goods intended for
11 resale by the tourism department;

12 X. procurement of printing, publishing and
13 distribution services for materials produced and intended for
14 resale by the cultural affairs department;

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

25 Z. procurement of services from community

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1 rehabilitation programs or qualified individuals pursuant to
2 the State Use Act;

3 AA. purchases of products or services for eligible
4 persons with disabilities pursuant to the federal
5 Rehabilitation Act of 1973;

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

10 CC. contracts for investment advisory services,
11 investment management services or other investment-related
12 services entered into by the educational retirement board, the
13 state investment officer or the retirement board created
14 pursuant to the Public Employees Retirement Act;

15 DD. the purchase for resale by the state fair
16 commission of feed and other items necessary for the upkeep of
17 livestock;

18 EE. contracts entered into by the crime victims
19 reparation commission to distribute federal grants to assist
20 victims of crime, including grants from the federal Victims of
21 Crime Act of 1984 and the federal Violence Against Women Act of
22 1994;

23 FF. procurement by or through the early childhood
24 education and care department of early pre-kindergarten and
25 pre-kindergarten services purchased pursuant to the Pre-

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1 Kindergarten Act;

2 GG. procurement of services of commissioned
3 advertising sales representatives for New Mexico magazine; and

4 HH. procurements exempt from the Procurement Code
5 as otherwise provided by law."

6 SECTION 13. Section 13-1-110 NMSA 1978 (being Laws 1984,
7 Chapter 65, Section 83) is amended to read:

8 "13-1-110. COMPETITIVE SEALED BIDS--IDENTICAL BIDS.--When
9 competitive sealed bids are used and two or more of the bids
10 submitted are identical in price and are the low bid, the state
11 purchasing agent or a central purchasing office may:

12 A. award pursuant to the multiple source award
13 provisions of Sections [~~126 and 127 of the Procurement Code~~]
14 13-1-153 and 13-1-154 NMSA 1978;

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

18 C. award to a resident manufacturer if the
19 identical low bids are submitted by a resident manufacturer and
20 a resident business;

21 D. award by lottery to one of the identical low
22 bidders; [~~or~~]

23 E. reject the identical low bids if the bids are
24 submitted by separately registered bidders that have the same
25 physical address, shared operations or shared ownership; or

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1 [~~E-~~] F. reject all bids and resolicit bids or
2 proposals for the required services, construction or items of
3 tangible personal property."

4 **SECTION 14.** Section 13-1-127 NMSA 1978 (being Laws 2019,
5 Chapter 153, Section 5) is amended to read:

6 "13-1-127. EMERGENCY PROCUREMENT--REQUIRED CONDITIONS--
7 LIMITATIONS--NOTICE.--

8 A. The state purchasing agent or a central
9 purchasing office may only make an emergency procurement when
10 the service, construction or item of tangible personal property
11 procured:

12 (1) is needed immediately to:

13 (a) control a serious threat to public
14 health, welfare, safety or property caused by a flood, fire,
15 epidemic, riot, act of terrorism, equipment failure or similar
16 event; or

17 (b) plan or prepare for the response to
18 a serious threat to public health, welfare, safety or property
19 caused by a flood, fire, epidemic, riot, act of terrorism,
20 equipment failure or similar event; and

21 (2) cannot be acquired through normal
22 procurement methods.

23 B. The state purchasing agent or a central
24 purchasing office:

25 (1) in making an emergency procurement, shall:

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1 (a) employ a competitive process to the
2 extent practicable under the circumstances; and

3 (b) use due diligence in determining the
4 basis for the procurement and in selecting a contractor; and

5 (2) shall not make an emergency procurement
6 for the purchase or lease of heavy road equipment.

7 C. The state purchasing agent or a central
8 purchasing office that makes an emergency procurement shall
9 outline its determination of the basis for the procurement and
10 its selection of the contractor in writing and include the
11 writing in the procurement file. Promptly thereafter:

12 (1) the ~~[state purchasing agent]~~ central
13 purchasing office shall post notice of the procurement, ~~[on its~~
14 ~~website; or]~~ including the name of the vendor and the contract
15 amount, to the sunshine portal; and

16 (2) the central purchasing office shall post
17 notice of the procurement on its website, if it maintains one
18 ~~[and shall transmit the notice to the state purchasing agent~~
19 ~~for posting on the state purchasing agent's website].~~

20 D. The state purchasing agent or a central
21 purchasing office that makes an emergency procurement to plan
22 or prepare for the response to a serious threat to public
23 health, welfare, safety or property caused by a flood, fire,
24 epidemic, riot, act of terrorism, equipment failure or similar
25 event shall account for the money spent in making the

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1 procurement and report on that accounting to the legislative
2 finance committee and the department of finance and
3 administration within sixty days after the end of the fiscal
4 year in which the procurement was made."

5 SECTION 15. Section 13-1-135.1 NMSA 1978 (being Laws
6 1995, Chapter 60, Section 2) is amended to read:

7 "13-1-135.1. SUSTAINABLE AND RECYCLED CONTENT
8 GOODS--COOPERATIVE PROCUREMENT.--

9 A. [~~Beginning July 1, 1995, each~~] A central
10 purchasing office shall [~~whenever its price, quality, quantity,~~
11 ~~availability and delivery requirements are met~~] purchase
12 sustainable and recycled content goods through contracts
13 established by the purchasing division of the general services
14 department or with other central purchasing offices whenever
15 its quality, quantity, availability and delivery requirements
16 are met and the cost of the sustainable and recycled content
17 goods is no more than ten percent higher than the cost of
18 comparable conventional goods.

19 B. A central purchasing office may negotiate
20 contracts and design procurements to exclusively purchase
21 sustainable goods and recycled content goods.

22 [~~B.~~] C. For purposes of this section:

23 (1) "recycled content goods" means supplies
24 and materials composed in whole or in part of recycled
25 materials; [~~provided that the recycled materials content meets~~

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1 ~~or exceeds the minimum content standards required by bid~~
2 ~~specifications]~~ and

3 (2) "sustainable goods" means supplies and
4 materials that are ecologically friendly or otherwise have a
5 reduced carbon footprint in their use or manufacture, as
6 established by the state purchasing agent."

7 SECTION 16. Section 13-1-160 NMSA 1978 (being Laws 1984,
8 Chapter 65, Section 133) is amended to read:

9 "13-1-160. AUDIT OF COST OR PRICING DATA.--A state agency
10 or a local public body may, at reasonable times and places,
11 audit the books and records of any person who has submitted
12 cost or pricing data, to the extent that [~~such~~] the books and
13 records relate to [~~such~~] the cost or pricing data, and may
14 audit the books and records related to sales for which a
15 payment of fees is required under a contract. Any person who
16 receives a contract, change order or contract modification for
17 which cost or pricing data is required shall maintain books and
18 records that relate to [~~such~~] the cost or pricing data for
19 three years from the date of final payment under the contract
20 unless a shorter period is otherwise authorized in writing."

21 SECTION 17. Section 13-1-174 NMSA 1978 (being Laws 1984,
22 Chapter 65, Section 147, as amended) is amended to read:

23 "13-1-174. AUTHORITY TO RESOLVE PROTESTS.--The state
24 purchasing agent, a central purchasing office or a designee of
25 either shall have the authority to take any action reasonably

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1 necessary to resolve a protest of an aggrieved bidder or
2 offeror. This authority shall be exercised in accordance with
3 ~~[regulations]~~ rules promulgated by the secretary, a local
4 public body or a central purchasing office ~~[which]~~ that has the
5 authority to issue ~~[regulations]~~ rules but shall not include
6 the authority to award money damages or ~~[attorneys']~~ attorney
7 fees. An entity unsuccessful in submitting a bid or offer is
8 deemed not a bidder nor offeror under this section and has no
9 right to protest."

10 SECTION 18. Section 13-1-184 NMSA 1978 (being Laws 1984,
11 Chapter 65, Section 157) is amended to read:

12 "13-1-184. ASSISTANCE TO SMALL BUSINESS--POLICY--
13 EXCLUSIVE PROCUREMENTS AUTHORIZED.--

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

17 B. The state purchasing agent or a central
18 purchasing office may design procurements to exclusively
19 receive proposals, bids or responses from small businesses."

20 SECTION 19. Section 13-1-187 NMSA 1978 (being Laws 1984,
21 Chapter 65, Section 160) is amended to read:

22 "13-1-187. SMALL BUSINESS--NEW MEXICO BUSINESS--REPORT TO
23 THE LEGISLATURE.--The state purchasing agent shall annually,
24 before January 1, report in writing to the legislature
25 concerning the awarding of state contracts to small businesses

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1 and New Mexico businesses during the preceding fiscal year."

2 SECTION 20. Section 13-1-188 NMSA 1978 (being Laws 1984,
3 Chapter 65, Section 161, as amended) is amended to read:

4 "13-1-188. PUBLIC ACQUISITION OF AMERICAN-MADE MOTOR
5 VEHICLES REQUIRED.--A state agency shall only acquire motor
6 vehicles assembled in North America except for electric
7 vehicles or gas-electric hybrid vehicles [~~until these vehicles~~
8 ~~are assembled in North America~~]; provided that this section
9 shall not apply to motor vehicles used for law enforcement
10 purposes. For the purposes of this section, "motor vehicle"
11 means a light-duty vehicle under eight thousand five hundred
12 pounds."

13 SECTION 21. REPEAL.--Laws 2012, Chapter 56, Section 4 and
14 Laws 2015, Chapter 73, Section 25 are repealed.

15 SECTION 22. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2021.