UNANNOTATED

CHAPTER 13
Public Purchases and Property

ARTICLE 1
Procurement

13-1-1 to 13-1-20. Repealed.

13-1-21. Application of preferences.

A. For the purposes of this section:

(1) "business" means a commercial enterprise carried on for the purpose of selling goods or services, including growing, producing, processing or distributing agricultural products;

(2) "formal bid process" means a competitive bid process;

(3) "formal request for proposals process" means a competitive proposal process, including a competitive qualifications-based proposal process;

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

(5) "Native American resident veteran business" means a business that has a valid Native American resident veteran business certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978;

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

(7) "recycled content goods" means supplies and materials composed twenty-five percent or more of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications;

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

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

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

(1) resident business or Native American resident business to be eight percent lower than the bid actually submitted; or

(2) resident veteran business or Native American resident veteran business with annual gross revenues of up to six million dollars ($6,000,000) in the preceding tax year to be ten percent lower than the bid actually submitted.

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

(1) bids submitted for recycled content goods from any business, except a resident veteran business or Native American resident veteran business, to be eight percent lower than the bids actually submitted; or

(2) bids submitted for recycled content goods from a resident veteran business or Native American resident veteran business with annual gross revenues of up to six million dollars ($6,000,000) in the preceding tax year to be ten percent lower than the bids actually submitted.

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

(1) eight percent of the total weight of all the factors used in evaluating the proposals to a resident business or Native American resident business; and

(2) ten percent of the total weight of all the factors used in evaluating the proposals to a resident veteran business or Native American resident veteran business that has annual gross revenues of up to six million dollars ($6,000,000) in the preceding tax year.

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

(1) eight percent of the total possible points to a resident business or Native American resident business; or

(2) ten percent of the total possible points to a resident veteran business or Native American resident veteran business that has annual gross revenues of up to six million dollars ($6,000,000) in the preceding tax year.

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

G. A person shall not benefit from the provisions of this section based on more than one business concurrently.

H. A public body shall not award a business both a resident business preference and a resident veteran business preference or a Native American resident business preference and a Native American resident veteran business preference.

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

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

History: 1978 Comp., § 13-1-21, enacted by Laws 1979, ch. 72, § 1; 1981, ch. 104, § 1; 1988, ch. 84, § 1; 1989, ch. 310, § 1; 1995, ch. 60, § 1; 1997, ch. 1, § 2; 1997, ch. 2, § 2; 1997, ch. 3, § 1; 2000, ch. 41, § 1; 2011 (1st S.S.), ch. 3, § 1; 2012, ch. 56, § 1; 2012, ch. 56, § 2; 2016, ch. 5, § 1; 2022, ch. 6, § 1.

13-1-21.1. Repealed.

13-1-21.2. Repealed.

History: Laws 1997, ch. 1, § 1 and Laws 1997, ch. 2, § 1; repealed by Laws 2011 (1st S.S.), ch. 3, § 8.

13-1-22. Resident business and resident contractor certification; Native American resident business and Native American resident contractor certificates; resident veteran business and resident veteran contractor certificates.

A. To receive a resident business, Native American resident business, resident veteran business or Native American resident veteran business preference pursuant to Section 13-1-21 NMSA 1978 or a resident contractor, Native American resident contractor, resident veteran contractor or Native American resident veteran contractor preference pursuant to Section 13-4-2 NMSA 1978, a business or contractor shall submit with its bid or proposal a copy of a valid resident business, Native American resident business, resident veteran business or Native American resident veteran business certificate or valid resident contractor, Native American resident contractor, resident veteran contractor or Native American resident veteran contractor certificate issued by the taxation and revenue department.

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

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

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

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

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

C. An application for a resident veteran business certificate shall include the affidavit required by Subsection B of this section and:

(1) verification by the United States department of veterans affairs as being either a veteran-owned small business or a service-disabled veteran-owned small business; or

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

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

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

(1) the contractor has:

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

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

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

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

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

E. An application for a resident veteran contractor certificate shall include the affidavit required by Subsection D of this section and:

(1) verification by the United States department of veterans affairs as being either a veteran-owned small business or a service-disabled veteran-owned small business; or

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

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

F. An application for a Native American resident business certificate or a Native American resident contractor certificate shall include an affidavit from a notary public setting forth that the business is:

(1) operating on lands located on an Indian nation, tribe or pueblo located in whole or in part on land within New Mexico; and

(2) at least fifty-one percent owned by an Indian nation, tribe or pueblo located in whole or in part on land within New Mexico; provided that:

(a) the Indian nation, tribe or pueblo receives at least a majority of the net income from the business; and

(b) the management and daily operation of the business are controlled by one or more individuals who are members of a New Mexico Indian nation, tribe or pueblo; or

(3) at least fifty-one percent owned by one or more New Mexico residents who are members of a federally recognized Indian nation, tribe or pueblo located in whole or in part on land within New Mexico and that is established for the purpose of profit; provided that:

(a) the Native American owners receive at least a majority of the net income from the business; and

(b) the management and daily operation of the business are controlled by one or more individuals who are members of a New Mexico Indian nation, tribe or pueblo.

G. An application for a Native American resident veteran business certificate or a Native American resident veteran contractor certificate shall include the affidavit required by Subsection F of this section and, if the business is not owned by an Indian nation, tribe or pueblo:

(1) verification by the United States department of veterans affairs that the business is either a veteran-owned small business or a service-disabled veteran-owned small business;

(2) verification of veteran status of a majority of the owners of the business as indicated by the United States department of defense DD form 214 of release or discharge from active duty with an honorable discharge or of service-disabled veteran status by the United States department of veterans affairs; or

(3) verification of veteran status of the contractor as indicated by the United States department of defense DD form 214 of release or discharge from active duty with

an honorable discharge or of service-disabled veteran status by the United States department of veterans affairs.

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

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

J. If, following a hearing and an opportunity to be heard, the administrative hearings office finds that a business or contractor provided false information to the taxation and revenue department in order to obtain a certificate or that a business or contractor used a certificate to obtain a resident business or resident contractor preference for a bid or proposal and the resident business or contractor did not perform the percentage of the contract specified in the bid or proposal, the business or contractor:

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

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

K. In a decision issued pursuant to Subsection I or J of this section, the taxation and revenue department or the administrative hearings office shall state the reasons for the action taken and inform an aggrieved business or contractor of the right to judicial review of the determination pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

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

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

N. For purposes of this section:

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

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

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

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

History: 1953 Comp., § 6-5-32.1, enacted by Laws 1969, ch. 184, § 1; 1979, ch. 72, § 2; 2011 (1st S.S.), ch. 3, § 2; 2012, ch. 56, § 3; repealed and reenacted by Laws 2012, ch. 56, § 4; 2015, ch. 73, § 24; 2015, ch. 73, § 25; 2022, ch. 6, § 2.

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

13-1-28. Short title.

Sections 13-1-28 through 13-1-199 NMSA 1978 may be cited as the "Procurement Code".

History: Laws 1984, ch. 65, § 1; 2006, ch. 23, § 1.

13-1-29. Rules of construction; purposes.

A. The Procurement Code shall be liberally construed and applied to promote its purposes and policies.

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

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

History: Laws 1984, ch. 65, § 2.

13-1-30. Application of the code.

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

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

History: Laws 1984, ch. 65, § 3; 1994, ch. 143, § 1; 2005, ch. 131, § 1.

13-1-30.1. Standardized classification codes; applicability.

Each state agency and local public body shall use the standardized classification codes developed by the state purchasing agent.

History: Laws 2015, ch. 138, § 2.

13-1-31. Definition; architectural services.

"Architectural services" means services related to the art and science of designing and building structures for human habitation or use and includes planning, providing preliminary studies, designs, specifications, working drawings and providing for general administration of construction contracts.

History: Laws 1984, ch. 65, § 4.

13-1-32. Definition; blind trust.

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

History: Laws 1984, ch. 65, § 5.

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

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

History: Laws 1984, ch. 65, § 6.

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

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

History: Laws 1984, ch. 65, § 7.

13-1-35. Definition; business.

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

History: Laws 1984, ch. 65, § 8.

13-1-36. Definition; catalogue price.

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

A. is regularly maintained by the manufacturer or vendor of an item; and

B. is either published or otherwise available for inspection by a customer.

History: Laws 1984, ch. 65, § 9.

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

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

History: Laws 1984, ch. 65, § 10; 2013, ch. 70, § 2.

13-1-38. Definition; change order.

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

History: Laws 1984, ch. 65, § 11.

13-1-38.1. Definition; chief procurement officer.

"Chief procurement officer" means that person within a state agency's or local public body's central purchasing office who is responsible for the control of procurement of items of tangible personal property, services or construction. "Chief procurement officer" includes the state purchasing agent.

History: Laws 2013, ch. 70, § 1.

13-1-39. Definition; confidential information.

"Confidential information" means any information which is available to an employee because of the employee's status as an employee of a state agency or a local public body and which is not a matter of public knowledge or available to the public on request.

History: Laws 1984, ch. 65, § 12.

13-1-40. Definition; construction.

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

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

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

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

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

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

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

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or other mining appurtenance;

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

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

(14) similar work, structures or installations.

B. "Construction" shall also include:

(1) leveling or clearing land;

(2) excavating earth;

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

(4) similar work, structures or installations.

History: Laws 1984, ch. 65, § 13.

13-1-40.1. Definition; construction management and construction manager.

A. "Construction management" means consulting services related to the process of management applied to a public works project for any duration from conception to completion of the project for the purpose of controlling time, cost and quality of the project.

B. "Construction manager" means a person who acts as an agent of the state agency or local public body for construction management, for whom the state agency or local public body shall assume all the risks and responsibilities.

History: 1978 Comp., § 13-1-40.1, enacted by Laws 1997, ch. 171, § 1.

13-1-41. Definition; contract.

"Contract" means any agreement for the procurement of items of tangible personal property, services or construction.

History: Laws 1984, ch. 65, § 14.

13-1-42. Definition; contract modification.

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

History: Laws 1984, ch. 65, § 15.

13-1-43. Definition; contractor.

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

History: Laws 1984, ch. 65, § 16.

13-1-44. Definition; cooperative procurement.

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

History: Laws 1984, ch. 65, § 17.

13-1-45. Definition; cost analysis.

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

History: Laws 1984, ch. 65, § 18.

13-1-46. Definition; cost data.

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

History: Laws 1984, ch. 65, § 19.

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

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

History: Laws 1984, ch. 65, § 20.

13-1-48. Repealed.

13-1-49. Definition; data.

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

History: Laws 1984, ch. 65, § 22.

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

"Definite quantity contract" means a contract which requires the contractor to furnish a specified quantity of services, items of tangible personal property or construction at or within a specified time.

History: Laws 1984, ch. 65, § 23.

13-1-51. Definition; designee.

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

History: Laws 1984, ch. 65, § 24.

13-1-52. Definition; determination.

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

History: Laws 1984, ch. 65, § 25.

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

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

History: Laws 1984, ch. 65, § 26.

13-1-53.1. Definition; electronic.

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

History: Laws 2001, ch. 292, § 1.

13-1-54. Definition; employee.

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

History: Laws 1984, ch. 65, § 27.

13-1-55. Definition; engineering services.

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

History: 1978 Comp., § 13-1-55, enacted by Laws 1989, ch. 69, § 1.

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

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

History: Laws 1984, ch. 65, § 29.

13-1-56.1. Recompiled.

History: Laws 2013, ch. 149, § 1.

13-1-57. Definition; financial interest.

"Financial interest" means:

A. holding a position in a business as officer, director, trustee or partner or holding any position in management; or

B. ownership of more than five percent interest in a business.

History: Laws 1984, ch. 65, § 30.

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

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

History: Laws 1984, ch. 65, § 31.

13-1-59. Definition; gratuity.

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

History: Laws 1984, ch. 65, § 32.

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

"Heavy road equipment" means any motor-driven vehicle or apparatus capable of use for earth moving or mixing components which has an aggregate value or price of over one thousand dollars ($1,000).

History: Laws 1984, ch. 65, § 33.

13-1-61. Definition; highway reconstruction.

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

History: Laws 1984, ch. 65, § 34.

13-1-62. Definition; immediate family.

"Immediate family" means a spouse, children, parents, brothers and sisters.

History: Laws 1984, ch. 65, § 35.

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

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

History: Laws 1984, ch. 65, § 36.

13-1-63.1. Definition; instructional materials.

"Instructional materials" means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary materials and electronic media.

History: 1978 Comp., § 13-1-63.1, enacted by Laws 2023, ch. 149, § 1.

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

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

History: Laws 1984, ch. 65, § 37.

13-1-65. Definition; surveying services.

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

A. the measuring and locating of lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volume;

B. the monumenting of property boundaries and the platting and layout of lands and subdivisions thereof;

C. the application of photogrammetric methods used to derive topographic and other data;

D. the establishment of horizontal and vertical controls for surveys for design, topographic surveys including photogrammetric methods, construction surveys for engineering and architectural public works; and

E. the preparation and perpetuation of maps, records, plats, field notes and property descriptions.

History: 1978 Comp., § 13-1-65, enacted by Laws 1989, ch. 69, § 2.

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

"Landscape architectural services" means services including but not limited to consultation, investigation, reconnaissance, research, design, preparation of drawings

and specifications and administration of contracts where the dominant purposes of such services are:

A. the preservation or enhancement of land uses and natural features;

B. the location and construction of functional approaches for structures, pathways or walkways; or

C. the design of trails, plantings and landscape irrigation. Excluded from the provisions of this section are the services of architects, engineers and surveyors as defined in the Procurement Code.

History: Laws 1984, ch. 65, § 39; 1989, ch. 69, § 3.

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

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

History: 1978 Comp., § 13-1-66.1, enacted by Laws 1989, ch. 69, § 4; 1993, ch. 72, § 1; 2007, ch. 315, § 1.

13-1-67. Definition; local public body.

"Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code.

History: Laws 1984, ch. 65, § 40; 1999, ch. 258, § 1; 2003, ch. 267, § 1.

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

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

History: Laws 1984, ch. 65, § 41.

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

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

History: Laws 1984, ch. 65, § 42.

13-1-70. Definition; notice of invitation for bids.

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

History: Laws 1984, ch. 65, § 43.

13-1-70.1. Definition; person.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or other legal or commercial entity.

History: Laws 2013, ch. 41, § 1.

13-1-71. Definition; price agreement.

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

History: Laws 1984, ch. 65, § 44.

13-1-72. Definition; price analysis.

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

History: Laws 1984, ch. 65, § 45.

13-1-73. Definition; pricing data.

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

History: Laws 1984, ch. 65, § 46.

13-1-74. Definition; procurement.

"Procurement" means:

A. purchasing, renting, leasing, lease purchasing or otherwise acquiring items of tangible personal property, services or construction; and

B. all procurement functions, including but not limited to preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration.

History: Laws 1984, ch. 65, § 47.

13-1-75. Definition; procurement officer.

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

History: Laws 1984, ch. 65, § 48.

13-1-76. Definition; professional services.

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

History: Laws 1984, ch. 65, § 49; 1989, ch. 69, § 5; 1997, ch. 171, § 2.

13-1-77. Definition; purchase order.

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

History: Laws 1984, ch. 65, § 50; 2001, ch. 292, § 2.

13-1-78. Definition; purchase request.

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

History: Laws 1984, ch. 65, § 51.

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

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

History: Laws 1984, ch. 65, § 52.

13-1-80. Definition; regulation.

"Regulation" means any rule, order or statement of policy, including amendments thereto and repeals thereof, issued by a state agency or a local public body to affect persons not members or employees of the issuer.

History: Laws 1984, ch. 65, § 53.

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

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

History: Laws 1984, ch. 65, § 54.

13-1-82. Definition; responsible bidder.

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

History: Laws 1984, ch. 65, § 55.

13-1-83. Definition; responsible offeror.

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

History: Laws 1984, ch. 65, § 56.

13-1-84. Definition; responsive bid.

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

History: Laws 1984, ch. 65, § 57; 1987, ch. 348, § 1.

13-1-85. Definition; responsive offer.

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

History: Laws 1984, ch. 65, § 58.

13-1-86. Definition; secretary.

"Secretary" means the secretary of general services.

History: Laws 1984, ch. 65, § 59.

13-1-86.1. Duty to promulgate rules.

The secretary of general services shall promulgate rules necessary to implement the provisions of this 2016 act.

History: Laws 2016, ch. 5, § 3.

13-1-87. Definition; services.

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

History: Laws 1984, ch. 65, § 60.

13-1-88. Definition; small business.

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

History: Laws 1984, ch. 65, § 61.

13-1-89. Definition; specification.

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

History: Laws 1984, ch. 65, § 62.

13-1-90. Definition; state agency.

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

History: Laws 1984, ch. 65, § 63.

13-1-91. Definition; state public works project.

"State public works project" means a project of a state agency, not including projects of the state educational institutions, the supreme court building commission, the legislature or local public bodies, that uses architectural or engineering services requiring professional services costing fifty thousand dollars ($50,000) or more or landscape architectural or surveying services requiring professional services costing ten thousand dollars ($10,000) or more, excluding applicable state and local gross receipts taxes.

History: Laws 1984, ch. 65, § 64; 1989, ch. 69, § 6; 1991, ch. 127, § 1; 1993, ch. 72, § 2; 2007, ch. 312, § 4; 2007, ch. 315, § 2.

13-1-92. Definition; state purchasing agent.

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

History: Laws 1984, ch. 65, § 65.

13-1-93. Definition; tangible personal property.

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

History: Laws 1984, ch. 65, § 66.

13-1-94. Definition; using agency.

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

History: Laws 1984, ch. 65, § 67.

13-1-95. Purchasing division; creation; director is state purchasing agent; appointment; duties.

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

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

C. The purchasing division and state purchasing agent shall be responsible for the procurement of services, construction and items of tangible personal property for all state agencies except as otherwise provided in the Procurement Code and shall administer the Procurement Code for those state agencies not excluded from the requirement of procurement through the state purchasing agent.

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

(1) recommend procurement rules to the secretary;

(2) establish and maintain programs for the development and use of procurement specifications and for the inspection, testing and acceptance of services, construction and items of tangible personal property;

(3) cooperate with the state budget division of the department of finance and administration in the preparation of statistical data concerning the acquisition and usage of all services, construction and items of tangible personal property by state agencies;

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

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

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

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

(8) develop standardized classification codes for each expenditure by state agencies and local public bodies.

E. The state purchasing agent shall, upon the request of the central purchasing office of a local public body, procure a price agreement for the requested services, construction or items of tangible personal property. The state purchasing agent may procure a price agreement for services, construction or items of tangible personal property for a state agency or local public body that does not have a chief procurement officer.

History: Laws 1984, ch. 65, § 68; 2013, ch. 70, § 4; 2015, ch. 138, § 1.

13-1-95.1. Electronic transmissions.

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

(1) appropriate security to prevent unauthorized access to electronically submitted bids or proposals prior to the date and time set for opening of bids or the deadline set for receipt for proposals, including the electronic bidding, approval and award process; and

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

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

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

(2) the invitation for bids or request for proposals shall specify an opening date and time, a fixed closing date and time and an email account or other secure electronic location to which the electronic bid or proposal shall be submitted;

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

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

History: Laws 2001, ch. 292, § 7; 2006, ch. 23, § 2.

13-1-95.2. Chief procurement officers; reporting requirement; training; certification.

A. On or before January 1 of each year beginning in 2014, and every time a chief procurement officer is hired, each state agency and local public body shall provide to the state purchasing agent the name of the state agency's or local public body's chief procurement officer and information identifying the state agency's or local public body's central purchasing office, if applicable.

B. The state purchasing agent shall maintain a list of the names of the chief procurement officers reported to the state purchasing agent by state agencies and local public bodies. The state purchasing agent shall make the list of chief procurement officers available to the public through the web site of the purchasing division of the general services department and in any other appropriate form.

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

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

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

(1) make determinations, including determinations regarding exemptions, pursuant to the Procurement Code;

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

(3) approve procurement pursuant to the Procurement Code.

History: Laws 2013, ch. 70, § 3.

13-1-95.3. State agency; reporting required; in-state and out-of-state contracts.

All state agencies shall report annually to the purchasing division of the general services department information on the amount of state agency contracts awarded to in-state contractors and the amount awarded to out-of-state contractors.

History: Laws 2019, ch. 153, § 1.

13-1-96. Delegation of authority by the state purchasing agent.

The state purchasing agent may, with the consent of the secretary, delegate such of his authority to subordinates as he deems necessary and appropriate by clearly delineating in writing such delegated authority and the limitations thereto.

History: Laws 1984, ch. 65, § 69.

13-1-97. Centralization of procurement authority.

A. All procurement for state agencies shall be performed by the state purchasing agent except as otherwise provided in the Procurement Code.

B. All procurement for state agencies excluded from the requirement of procurement through the office of the state purchasing agent shall be performed by a central purchasing office, the chief procurement officer or as otherwise provided in the Procurement Code.

C. All procurement for local public bodies shall be performed by a central purchasing office designated by the governing authority of the local public body except as otherwise provided in the Procurement Code. Local public bodies shall identify their

designated central purchasing office to the state purchasing agent and shall report their chief procurement officers to the state purchasing agent.

History: Laws 1984, ch. 65, § 70; 2013, ch. 70, § 5.

13-1-97.1. Repealed.

History: Laws 2009, ch. 107, § 1; repealed by Laws 2012, ch. 52, § 1.

13-1-97.2. Competitive sealed bids and proposals; record maintenance.

A central purchasing office shall maintain, for a minimum of three years, all records relating to the award of a contract through a competitive sealed bid or competitive sealed proposal process.

History: Laws 2013, ch. 40, § 7.

13-1-98. Exemptions from the Procurement Code.

The provisions of the Procurement Code shall not apply to:

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

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

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

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

E. purchases of books, periodicals, instructional materials and training materials in printed, digital or electronic format from the publishers, designated public-education-department-approved instructional material depositories or copyright holders thereof and purchases of print, digital or electronic format library materials by public, school and state libraries for access by the public;

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

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

H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to rules adopted by the corrections industries commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

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

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

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

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

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

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

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

Q. contracts with professional entertainers;

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

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

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

U. contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act [Chapter 4, Article 48B NMSA 1978] or operation and maintenance of a hospital pursuant to the Special Hospital District Act [Chapter 4, Article 48A NMSA 1978];

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

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

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

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

Z. procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act [13-1C-1 to 13-1C-7 NMSA 1978];

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

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

CC. contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978];

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

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

FF.procurement by or through the early childhood education and care department of early pre-kindergarten and pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act [Chapter 32A, Article 23 NMSA 1978];

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

HH. contracts entered into by the forestry division of the energy, minerals and natural resources department to distribute federal grants to nongovernmental entities and individuals selected through an application process conducted by the United States department of agriculture, the United States department of the interior or any division or bureau thereof for programs for wildfire prevention or protection, urban forestry, forest and watershed restoration and protection, reforestation or economic development projects to advance the use of trees and wood biomass for hazardous fuel reduction; and

II. procurements exempt from the Procurement Code as otherwise provided by law.

History: Laws 1984, ch. 65, § 71; 1987, ch. 6, § 1; 1987, ch. 348, § 2; 1990, ch. 73, § 1; 1991, ch. 78, § 1; 1991, ch. 118, § 1; 1994, ch. 143, § 2; 1999, ch. 258, § 2; 2001, ch. 291, § 8; 2001, ch. 292, § 3; 2001, ch. 305, § 28; 2001, ch. 312, § 13; 2004, ch. 62, § 1; 2005, ch. 23, § 2; 2005, ch. 317, §2; 2005, ch. 318, § 1; 2005, ch. 334, § 8; 2007, ch. 55, § 1; 2007, ch. 345, § 1; 2008, ch. 4, § 2; 2008, ch. 70, § 2; 2009, ch. 231, § 1; 2013, ch. 40, § 1; 2013, ch. 70, § 6; 2013, ch. 71, § 1; 2015, ch. 32, § 1; 2019, ch. 48, § 13; 2019, ch. 63, § 1; 2023, ch. 149, § 2; 2023, ch. 174, § 1.

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

The provisions of the Procurement Code shall not apply to procurement of items of tangible personal property or services by a state agency or a local public body through:

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

B. an agreement with any other state agency, local public body or external procurement unit or any other person, corporation, organization or association for the purpose of creating a network of health care providers or jointly operating a common health care service, if the state purchasing agent or a central purchasing office makes a determination that the arrangement will or is likely to reduce health care costs, improve quality of care or improve access to care.

History: Laws 1998, ch. 69, § 1.

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

The provisions of the Procurement Code do not apply to contracts entered into by a local public body with a person, firm, organization, corporation, association or state educational institution named in Article 12, Section 11 of the constitution of New Mexico for:

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

B. the lease or operation of a county hospital pursuant to the Hospital Funding Act [Chapter 4, Article 48B NMSA 1978] ;

C. the operation and maintenance of a hospital pursuant to the Special Hospital District Act [Chapter 4, Article 48A NMSA 1978]; or

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

History: Laws 2003, ch. 187, § 1; 2009, ch. 155, § 2.

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

Excluded from the requirement of procurement through the state purchasing agent but not from the requirements of the Procurement Code are the following:

A. procurement of professional services;

B. small purchases having a value not exceeding one thousand five hundred dollars ($1,500);

C. emergency procurement;

D. procurement of highway construction or reconstruction by the department of transportation;

E. procurement by the judicial branch of state government;

F. procurement by the legislative branch of state government;

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

H. procurement by the state fair commission of tangible personal property, services and construction under twenty thousand dollars ($20,000);

I. purchases of instructional materials;

J. procurement by all local public bodies;

K. procurement by regional education cooperatives;

L. procurement by charter schools;

M. procurement by each state health care institution that provides direct patient care and that is, or a part of which is, medicaid certified and participating in the New Mexico medicaid program; and

N. procurement by the public school facilities authority.

History: Laws 1984, ch. 65, § 72; 1987, ch. 189, § 1; 1988, ch. 84, § 2; 1994, ch. 143, § 3; 1995, ch. 130, § 1; 1996, ch. 25, § 2; 1999, ch. 281, § 16; 2001, ch. 292, § 4; 2004, ch. 62, § 2; 2006, ch. 95, § 11; 2007, ch. 93, § 1; 2023, ch. 149, § 3.

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

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

History: Laws 1984, ch. 65, § 73; 1987, ch. 348, § 3.

13-1-100.1. Construction contracts; construction management services.

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

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

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

History: 1978 Comp., § 13-1-100.1, enacted by Laws 1997, ch. 171, § 3.

13-1-101. Repealed.

13-1-102. Competitive sealed bids required.

All procurement shall be achieved by competitive sealed bid pursuant to Sections 13-1-103 through 13-1-110 NMSA 1978, except procurement achieved pursuant to the following sections of the Procurement Code:

A. Sections 13-1-111 through 13-1-122 NMSA 1978, competitive sealed proposals;

B. Section 13-1-125 NMSA 1978, small purchases;

C. Section 13-1-126 NMSA 1978, sole source procurement;

D. Section 13-1-127 NMSA 1978, emergency procurements;

E. Section 13-1-129 NMSA 1978, existing contracts;

F. Section 13-1-130 NMSA 1978, purchases from antipoverty program businesses;

G. the Educational Facility Construction Manager At Risk Act [13-1-124.1 to 13-1-124.5 NMSA 1978]; and

H. the Transportation Construction Manager General Contractor Act [13-1-122.1 to 13-1-122.4 NMSA 1978].

History: Laws 1984, ch. 65, § 75; 2007, ch. 141, § 1; 2022, ch. 12, § 5.

13-1-103. Invitation for bids.

A. An invitation for bids shall be issued and shall include the specifications for the services, construction or items of tangible personal property to be procured, all

contractual terms and conditions applicable to the procurement, the location where bids are to be received, the date, time and place of the bid opening and the requirements for complying with any applicable in-state preference provisions as provided by law.

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

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

History: Laws 1984, ch. 65, § 76; 2006, ch. 23, § 3; 2011 (1st S.S.), ch. 3, § 3.

13-1-104. Competitive sealed bids; public notice.

A. An invitation for bids or a notice thereof shall be published not less than ten calendar days prior to the date set forth for the opening of bids. In the case of purchases made by the state purchasing agent, the invitation or notice shall be published at least once in at least three newspapers of general circulation in this state; in addition, an invitation or notice may be published electronically on the state purchasing agent's web site that is maintained for that purpose. In the case of purchases made by other central purchasing offices, the invitation or notice shall be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located. These requirements of publication are in addition to any other procedures that may be adopted by central purchasing offices to notify prospective bidders that bids will be received, including publication in a trade journal, if available. If there is no newspaper of general circulation in the area in which the central purchasing office is located, such other notice may be given as is commercially reasonable.

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

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

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

History: Laws 1984, ch. 65, § 77; 1989, ch. 275, § 1; 1995, ch. 102, § 1; 1999, ch. 166, § 1; 2001, ch. 292, § 5; 2005, ch. 214, § 1.

13-1-105. Competitive sealed bids; receipt and acceptance of bids.

A. Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in the Procurement Code. In addition to the requirement for the prime contractor and subcontractors to be registered as provided in Section 13-4-13.1 NMSA 1978, bids shall be evaluated based on the requirements set forth in the invitation for bids, which requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria such as discounts, transportation costs and total or life-cycle costs that will affect the bid price shall be objectively measurable, which shall be defined by rule. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. A bid submitted by a prime contractor that was not registered as required by Section 13-4-13.1 NMSA 1978 shall not be considered for award. A bid submitted by a registered prime contractor that includes any subcontractor that is not registered in accordance with that section may be considered for award following substitution of a registered subcontractor for any unregistered subcontractor in accordance with Section 13-4-36 NMSA 1978.

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

History: Laws 1984, ch. 65, § 78; 1987, ch. 348, § 4; 2005, ch. 98, § 1.

13-1-106. Competitive sealed bids; correction or withdrawal of bids.

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

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

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

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

History: Laws 1984, ch. 65, § 79.

13-1-107. Competitive sealed bids; bid opening.

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

History: Laws 1984, ch. 65, § 80.

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

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

History: Laws 1984, ch. 65, § 81; 1987, ch. 348, § 5.

13-1-108.1. Recompiled.

History: Laws 2013, ch. 41, § 5.

13-1-109. Competitive sealed bids; multi-step sealed bidding.

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

History: Laws 1984, ch. 65, § 82.

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

When competitive sealed bids are used and two or more of the bids submitted are identical in price and are the low bid, the state purchasing agent or a central purchasing office may:

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

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

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

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

E. reject all bids and resolicit bids or proposals for the required services, construction or items of tangible personal property.

History: Laws 1984, ch. 65, § 83.

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

A. Except as provided in Subsection G of Section 13-1-119.1 NMSA 1978, when a state agency or a local public body is procuring professional services or a design and build project delivery system, or when the state purchasing agent, a central purchasing office or a designee of either officer [office] makes a written determination that the use of competitive sealed bidding for items of tangible personal property or services is either not practicable or not advantageous to the state agency or a local public body, a procurement shall be effected by competitive sealed proposals.

B. Competitive sealed proposals may also be used for contracts for construction and facility maintenance, service and repairs.

C. Competitive sealed proposals may also be used for construction manager at risk contracts if a three-step selection procedure is used pursuant to the Educational Facility Construction Manager At Risk Act [13-1-124.1 to 13-1-124.5 NMSA 1978].

D. Competitive qualifications-based proposals shall be used for procurement of professional services of architects, engineers, landscape architects, construction managers and surveyors who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978.

E. Competitive sealed proposals shall also be used for contracts for the design and installation of measures the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act [Chapter 6, Article 23 NMSA 1978].

History: Laws 1984, ch. 65, § 84; 1989, ch. 69, § 7; 1997, ch. 171, § 4; 1999, ch. 220, § 1; 2003, ch. 267, § 2; 2005, ch. 178, § 2; 2007, ch. 141, § 2.

13-1-112. Competitive sealed proposals; request for proposals.

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

(1) the specifications for the services or items of tangible personal property to be procured;

(2) all contractual terms and conditions applicable to the procurement;

(3) the form for disclosure of campaign contributions given by prospective contractors to applicable public officials pursuant to Section 13-1-191.1 NMSA 1978;

(4) the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed; and

(5) the requirements for complying with any applicable in-state preference provisions as provided by law.

B. A request for proposals may, pursuant to Section 13-1-95.1 NMSA 1978, require that all or a portion of a responsive proposal be submitted electronically.

C. In the case of requests for competitive qualifications-based proposals, price shall be determined by formal negotiations related to scope of work.

History: Laws 1984, ch. 65, § 85; 1989, ch. 69, § 8; 2006, ch. 23, § 4; 2007, ch. 234, § 1; 2011 (1st S.S.), ch. 3, § 4.

13-1-113. Competitive sealed proposals; public notice.

Public notice of the request for proposals shall be given in the same manner as provided in Section 77 [13-1-104 NMSA 1978] of the Procurement Code.

History: Laws 1984, ch. 65, § 86.

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

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

History: Laws 1984, ch. 65, § 87.

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

Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. This section shall not apply to architects, engineers, landscape architects and surveyors who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978.

History: Laws 1984, ch. 65, § 88; 1989, ch. 69, § 9.

13-1-116. Competitive sealed proposals; disclosure; record.

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

History: Laws 1984, ch. 65, § 89.

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

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

History: Laws 1984, ch. 65, § 90; 1987, ch. 348, § 6.

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

A. Each agency within the legislative branch of government operating under the provisions of the Procurement Code and each local public body shall adopt regulations regarding its selection and award of professional services contracts.

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

History: 1978 Comp., § 13-1-117.1, enacted by Laws 1987, ch. 348, § 7.

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

A. Any local public body which does not have on staff a licensed professional engineer, surveyor, architect or landscape architect shall have appointed to it or have the appointment waived by the appropriate New Mexico professional society listed in Subsection D of this section, an individual to serve as a professional technical advisor. The professional technical advisor shall be a senior member of an architectural, engineering, surveying or landscape architectural business with experience appropriate to the type of local public works project proposed and shall be a resident licensed architect, professional engineer, surveyor or landscape architect in the state who possesses at least ten years of experience in responsible charge as defined in the Architectural Act [Chapter 61, Article 15 NMSA 1978], the Engineering and Surveying Practice Act [Chapter 61, Article 23 NMSA 1978] or the Landscape Architects Act [Chapter 61, Article 24B NMSA 1978], respectively.

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

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

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

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

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

(4) assist in contract negotiations.

D. Professional technical advisors shall be obtained through the professional technical advisory board, a consortium of the consulting engineers council of New Mexico and the professional engineers in private practice division of the New Mexico society of professional engineers; the New Mexico professional surveyors; the New Mexico society of architects; or the New Mexico chapter of the American society of landscape architects.

E. No individual or firm whose principal, officer, director or employee serves as a professional technical advisor to a local public body shall be permitted to submit a proposal to the local public body during the period in which the individual, principal, officer, director or employee serves as a professional technical advisor to the local public body; however, nothing in this section shall prohibit an individual or firm from submitting a proposal to any municipality in which the individual or a principal, officer, director or employee is not serving as a professional technical advisor.

History: 1978 Comp., § 13-1-117.2, enacted by Laws 1989, ch. 69, § 10; 1991, ch. 127, § 2; 1993, ch. 289, § 1.

13-1-117.3. Contracts for the design and installation of measures for the conservation of natural resources.

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

History: Laws 2005, ch. 178, § 3.

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

All contracts for professional services with state agencies shall be reviewed as to form, legal sufficiency and budget requirements by the general services department if required by the regulations of the department. This section does not apply to contracts entered into by the legislative branch of state government, the judicial branch of state government or the boards of regents of state educational institutions named in Article 12, Section 11 of the constitution of New Mexico.

History: Laws 1984, ch. 65, § 91; 2019, ch. 153, § 2.

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

In addition to compliance with the requirements of Sections 13-1-112 through 13-1-114 and 13-1-116 through 13-1-118 NMSA 1978, a state agency or local public body, when procuring the services of architects, landscape architects, engineers or surveyors for state public works projects or local public works projects, shall comply with Sections 13-1-120 through 13-1-124 NMSA 1978.

History: Laws 1984, ch. 65, § 92; 1987, ch. 301, § 1; 1989, ch. 69, § 11.

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

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

(1) the extent to which the project requirements have been or can be adequately defined;

(2) time constraints for delivery of the project;

(3) the capability and experience of potential teams with the design and build process;

(4) the suitability of the project for use of the design and build process as concerns time, schedule, costs and quality; and

(5) the capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.

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

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

(1) during phase one, and prior to solicitation, documents shall be prepared for a request for qualifications by a registered engineer or architect, either in-house or selected in accordance with Sections 13-1-120 through 13-1-124 NMSA 1978, and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, the composition of the selection committee and a description of the phase-two requirements and subsequent management needed to bring the project to completion. Design and build qualifications of responding firms shall be evaluated, and a maximum of five firms shall be short-listed in accordance with technical and qualifications-based criteria; and

(2) during phase two, the short-listed firms shall be invited to submit detailed specific technical concepts or solutions, costs and scheduling. Unsuccessful firms may be paid a stipend to cover proposal expenses. After evaluation of these submissions, selection shall be made and the contract awarded to the highest-ranked firm.

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

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

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

(1) the maximum allowable construction cost of the project is four hundred thousand dollars ($400,000) or less; and

(2) the only requirement for architects, engineers, landscape architects or surveyors is limited to either site improvements or adaption for a pre-engineered building or system.

G. The procurement of a design and build project delivery system qualifying for exemptions pursuant to Subsection F of this section, including the services of any architect, engineer, landscape architect, construction manager or surveyor needed for

the project, shall be accomplished by competitive sealed bids pursuant to Sections 13-1-102 through 13-1-110 NMSA 1978.

History: 1978 Comp., § 13-1-119.1, enacted by Laws 1997, ch. 171, § 5; 1999, ch. 220, § 2; 2003, ch. 222, § 1; 2013, ch. 146, § 1.

13-1-119.2. Design and build procurement for certain transportation projects.

Notwithstanding any prohibition on road and highway construction or reconstruction projects in Section 13-1-119.1 NMSA 1978, the department of transportation may use a design and build project delivery system pursuant to Section 13-1-119.1 NMSA 1978.

History: Laws 2009, ch. 207, § 1; 2016, ch. 85, § 1; 2016, ch. 86, § 1; 2021, ch. 26, § 1; 2022, ch. 12, § 6.

13-1-120. Competitive sealed qualifications-based proposals; architects; engineers; landscape architects; surveyors; selection process.

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

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

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

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

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

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

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

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

(7) notwithstanding any other provisions of this subsection, price may be considered in connection with construction management contracts, unless the services are those of an architect, engineer, landscape architect or surveyor.

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

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

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

D. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, the appropriate selection committee's final ranking and evaluation scores for all proposals shall become public information. Businesses which have not been selected for contract award shall be so notified in writing within fifteen days after an award is made.

History: Laws 1984, ch. 65, § 93; 1987, ch. 301, § 2; 1989, ch. 69, § 12; 1993, ch. 72, § 3; 1997, ch. 171, § 6.

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

A. For each state public works project, an "architect, engineer, landscape architect and surveyor selection committee" shall be formed with four members as follows:

(1) one member of the agency for which the project is being designed;

(2) the director of the facilities management division of the general services department, or the director's designee, who shall be chair;

(3) one member designated by the joint practice committee; and

(4) one member designated by the secretary.

B. Once an architect, engineer, landscape architect and surveyor selection committee is formed, no member shall be substituted or permitted to serve through a proxy for the duration of the selection process for a state public works project.

C. The staff architect or the staff architect's designee of the facilities management division shall serve as staff to the architect, engineer, landscape architect and surveyor selection committee.

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

E. Notwithstanding the provisions of this section, an architect, engineer, landscape architect and surveyor selection committee shall not be formed for department of transportation highway projects. The department of transportation shall create its own selection committee by rule, after notice and hearing, for department of transportation highway projects.

History: Laws 1984, ch. 65, § 94; 1987, ch. 301, § 3; 1989, ch. 69, § 13; 1993, ch. 72, § 4; 2013, ch. 115, § 10; 2015, ch. 139, § 1.

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

The secretary or his designee, or the secretary of the highway and transportation department or his designee or a designee of a local public body shall negotiate a contract with the highest qualified business for the architectural, landscape architectural, engineering or surveying services at compensation determined in writing to be fair and reasonable. In making this decision, the secretary or his designee or the designee of a local public body shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services. Should the secretary or his designee or the designee of a local public body be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The secretary or his designee or the designee of a local public body shall

then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the secretary or his designee or a designee of a local public body shall formally terminate negotiations with that business. The secretary or his designee or the designee of the local public body shall then undertake negotiations with the third most qualified business. Should the secretary or his designee or a designee of a local public body be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the secretary or his designee or the designee of a local public body shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated. The secretary or the representative of a local public body shall publicly announce the business selected for award.

History: Laws 1984, ch. 65, § 95; 1989, ch. 69, § 14; 1993, ch. 72, § 5.

13-1-122.1. Short title.

Sections 13-1-122.1 through 13-1-122.4 NMSA 1978 may be cited as the "Transportation Construction Manager General Contractor Act".

History: 1978 Comp., § 13-1-122.1, enacted by Laws 2022, ch. 12, § 1.

13-1-122.2. Definitions.

As used in the Transportation Construction Manager General Contractor Act:

A. "construction manager general contractor" means a person who, pursuant to a contract with the department, provides preconstruction services, construction management and construction services required for a project;

B. "construction manager general contractor delivery method" means a project delivery method in which a contract for construction manager general contractor services is procured separately from a contract for project design services and a contract for independent cost estimate services;

C. "department" means the department of transportation;

D. "guaranteed maximum price" means the maximum amount to be paid by the department for the construction of the project;

E. "preconstruction services" means consulting services related to construction management and construction provided during the transportation project design stage;

F. "project" means a state public works project for highway construction or reconstruction;

G. "project design services" means engineering services, surveying services or landscape architectural services; and

H. "secretary" means the secretary of transportation.

History: 1978 Comp., § 13-1-122.2, enacted by Laws 2022, ch. 12, § 2.

13-1-122.3. Construction manager general contractor delivery method authorized.

A. The secretary may use a construction manager general contractor delivery method on a project if the department makes a written determination that it is appropriate and in the best interest of the department to use this method of project delivery to procure an eligible project. The determination to use the construction manager general contractor delivery method shall be issued only after the department considers the following criteria, at a minimum:

(1) the level of design and the extent to which the project requirements have been or can be adequately defined;

(2) time constraints for project delivery;

(3) project complexity;

(4) the suitability of use of the construction manager general contractor delivery method; and

(5) the capability of the department to manage the project, including experienced personnel or outside consultants.

B. The secretary shall not make a determination to use a construction manager general contractor delivery method unless the project is posted with such determination on the department's website for at least ninety days.

C. The secretary, in consultation with the professional associations and contractors from within the highway design and construction industry, shall promulgate rules for solicitation and award of construction manager general contractor contracts. The rules shall establish criteria for selecting, procuring and contracting a project using the construction manager general contractor delivery method. The rules shall define the scope of the construction manager general contractor contract to require the construction manager general contractor to:

(1) provide a range of preconstruction services and participate in project design, cost control, scheduling and value engineering efforts for the project; and

(2) if the second phase of the contract is entered into, provide the construction work for the project or work packages associated with the project at a guaranteed maximum price for which the construction manager general contractor is financially responsible.

History: 1978 Comp., § 13-1-122.3, enacted by Laws 2022, ch. 12, § 3.

13-1-122.4. Construction manager general contractor; multi-phased procedure.

A. The selection procedure shall use a competitive sealed qualifications-based proposal method that conforms with Sections 13-1-111 through 13-1-117 NMSA 1978 and results in a professional services contract. The contract scope of work shall be divided into two separate but related phases:

(1) phase one for design consultation and preconstruction services; and

(2) phase two for project construction.

B. The department shall issue a separate request for proposals for each project that uses a construction manager general contractor delivery method.

C. The department's request for proposals for a construction manager general contractor contract shall contain, at a minimum, the following elements:

(1) a statement of the minimum qualifications for the construction manager general contractor, including requirements for:

(a) a contractor's license for the type of work to be performed, issued pursuant to the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978];

(b) registration pursuant to Section 13-4-13.1 NMSA 1978;

(c) minimum bond capacity;

(d) the ability to self-perform, with its own organization, a minimum percentage of construction work as required and defined in the department's standard specifications for highway and bridge construction, current edition; and

(e) current registration as a prequalified contractor pursuant to rule promulgated by the department;

(2) the procedures for submitting proposals, the criteria for evaluation of qualifications and the relative weight of the criteria;

(3) the form of contract to be awarded;

(4) a listing or description of the types of preconstruction and construction services that will be required;

(5) identification of requirements for liability insurance, a proposal bond pursuant to Section 13-1-146 NMSA 1978 and performance and payment bonds pursuant to Section 13-4-18 NMSA 1978;

(6) a description of the method to be used for pricing or negotiation of construction manager general contractor fees for the scope of services; and

(7) preferences as allowed by law in the Procurement Code for New-Mexico-based businesses and others.

D. The department shall use a selection committee for the evaluation of the qualifications submitted by offerors and shall determine the offerors that qualify for award of the construction manager general contractor contract. The department shall establish a construction manager general contractor selection committee by rule. The selection committee shall rank the offerors and provide a recommendation to the department identifying the offeror most qualified based on the highest ranking score.

E. Nothing in this section precludes the selection committee from recommending the termination of the selection procedure pursuant to Section 13-1-131 NMSA 1978.

F. The department shall promulgate rules for the selection process and award of contract that include interviews with top-ranked offerors, price negotiations and the authority to terminate negotiations.

G. The department rules shall address the processes applicable to the award of a contract for construction management and construction services, including the process for conducting contract negotiations with the construction manager general contractor for construction of the project or work packages associated with the project in accordance with contract documents and specifications.

H. The department shall secure and use an independent cost estimate for the project or each work package associated with the project to validate the negotiated costs for the construction management and construction services contract. The independent cost estimate shall remain confidential until notice of award of the construction contract.

I. The construction manager general contractor shall submit a guaranteed maximum price proposal for construction management and construction services for the project or work packages associated with the project.

J. Negotiations may begin between the department and the construction manager general contractor for the construction services before completion of the design work. Upon successful negotiation, the department shall execute the contract with the construction manager general contractor for construction of the project or work packages associated with the project.

K. Negotiations shall be terminated if the department is unable to reach a price agreement with the construction manager general contractor. In the event that negotiations are terminated, the department may competitively bid the construction phase of the project, in accordance with the department's procedures applicable to public works construction projects. The construction manager general contractor may be allowed to bid or provide subcontract services for the project, unless prohibited by Section 10-16-13 NMSA 1978.

L. Data developed during the design services and the construction manager general contractor's preconstruction services, unless otherwise protected by law, shall be made available to all bidders.

M. After a construction manager general contractor contract is awarded for the preconstruction services, the department shall make the names of each offeror and the ranking and evaluation scores for each available for public inspection.

History: 1978 Comp., § 13-1-122.4, enacted by Laws 2022, ch. 12, § 4.

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

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

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

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

History: Laws 1984, ch. 65, § 96; 1989, ch. 69, § 15.

13-1-124. Architect rate schedule.

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

History: Laws 1984, ch. 65, § 97.

13-1-124.1. Short title.

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

History: Laws 2007, ch. 141, § 3.

13-1-124.2. Applicability.

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

History: Laws 2007, ch. 141, § 4.

13-1-124.3. Definitions.

As used in the Educational Facility Construction Manager At Risk Act [13-1-124.1 to 13-1-124.5 NMSA 1978]:

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

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

all at a guaranteed maximum price for which the construction manager at risk is financially responsible;

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

D. "governing body" means:

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

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

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

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

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

History: Laws 2007, ch. 141, § 5.

13-1-124.4. Construction manager at risk delivery method authorized; multiphase selection procedure.

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

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

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

(1) a statement of the minimum qualifications for the construction manager at risk, including the requirements for:

(a) a contractor's license for the type of work to be performed, issued pursuant to the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978];

(b) registration pursuant to Section 13-4-13.1 NMSA 1978; and

(c) a minimum bond capacity;

(2) a statement of the scope of work to be performed, including:

(a) the location of the project and the total amount of money available for the project;

(b) a proposed schedule, including a deadline for submission of the statements of qualification;

(c) specific project requirements and deliverables;

(d) the composition of the selection committee;

(e) a description of the process the selection committee shall use to evaluate qualifications;

(f) a proposed contract; and

(g) a detailed statement of the relationships and obligations of all parties, including the construction manager at risk, agents of the governing body, such as an architect or engineer, and the governing body;

(3) a verification of the maximum allowable construction cost; and

(4) a request for a proposal bond as required by Section 13-1-146 NMSA 1978.

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

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

F. In a three-step procedure, the selection committee shall issue a request for proposals and evaluate the proposals pursuant to Sections 13-1-112 through 13-1-117 NMSA 1978 except that:

(1) the request for proposals shall be sent only to those determined to be qualified pursuant to Subsection D of this section;

(2) the selection committee shall evaluate the proposals and conduct interviews with up to three of the highest-ranked offerors instead of negotiating with responsible offerors found to be reasonably likely to be selected; and

(3) pursuant to Subsection G of this section, the contract award may be made after the interviews.

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

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

(1) the offeror’s experience with construction of similar types of projects;

(2) the qualifications and experience of the offeror's personnel and consultants and the role of each in the project;

(3) the plan for management actions to be undertaken on the project, including services to be rendered in connection with safety and the safety plan for the project;

(4) the offeror’s experience with the construction manager at risk method; and

(5) all other selection criteria, as stated in the request for qualifications and the request for proposals.

I. Nothing in this section precludes the selection committee from recommending the termination of the selection procedure pursuant to Section 13-1-131 NMSA 1978 and repeating the selection process pursuant to this section. Any material received by the selection committee in response to a solicitation that is terminated shall not be disclosed so as to be available to competing offerors.

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

History: Laws 2007, ch. 141, § 6.

13-1-124.5. Responsibilities of construction manager at risk following award of project.

A. The contract with the construction manager at risk shall specify:

(1) the guaranteed maximum price; and

(2) the percentage of the guaranteed price that the construction manager at risk will perform with its own work force.

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

C. The construction manager at risk shall:

(1) conduct pre-bid or pre-proposal meetings;

(2) advise the governing body about bidding or proposals;

(3) enter into contracts; and

(4) assist the governing body in evaluating submissions by responsible bidders and offerors.

History: Laws 2007, ch. 141, § 7.

13-1-125. Small purchases.

A. A central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding sixty thousand dollars ($60,000), excluding applicable state and local gross receipts taxes, in accordance with the applicable small purchase rules adopted by the secretary, a local public body or a central purchasing office that has the authority to issue rules.

B. Notwithstanding the requirements of Subsection A of this section, a central purchasing office may procure professional services having a value not exceeding sixty thousand dollars ($60,000), excluding applicable state and local gross receipts taxes, except for the services of landscape architects or surveyors for state public works projects or local public works projects, in accordance with professional services procurement rules promulgated by the general services department or a central purchasing office with the authority to issue rules.

C. Notwithstanding the requirements of Subsection A of this section, a state agency or a local public body may procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars ($20,000), excluding applicable state and local gross receipts taxes, by issuing a direct purchase order to a contractor based upon the best obtainable price.

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

History: Laws 1984, ch. 65, § 98; 1987, ch. 348, § 8; 1988, ch. 54, § 1; 1989, ch. 69, § 16; 1995, ch. 139, § 1; 1997, ch. 69, § 1; 2001, ch. 292, § 6; 2005, ch. 214, § 2; 2007, ch. 315, § 3; 2013, ch. 70, § 7; 2019, ch. 153, § 3.

13-1-126. Sole source procurement.

A. A contract may be awarded without competitive sealed bids or competitive sealed proposals regardless of the estimated cost when the state purchasing agent or a central purchasing office determines, in writing, that:

(1) there is only one source for the required service, construction or item of tangible personal property;

(2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and

(3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

B. The state purchasing agent or a central purchasing office shall use due diligence in determining the basis for the sole source procurement, including reviewing available sources and consulting the using agency, and shall include its written determination in the procurement file.

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

D. A contract for the purchase of research consultant services by institutions of higher learning constitutes a sole source procurement.

E. The state purchasing agent or a central purchasing office shall not circumvent this section by narrowly drafting specifications so that only one predetermined source would satisfy those specifications.

History: Laws 1984, ch. 65, § 99; 1987, ch. 348, § 9; 2013, ch. 40, § 2.

13-1-126.1. Sole source contracts; notice; protest.

A. At least thirty days before it awards a sole source contract, the state purchasing agent shall post notice of its intent to award the contract on its website. At least thirty days before it awards a sole source contract, a central purchasing office shall post notice of its intent to award the contract on its website, if it maintains one, and shall transmit the notice to the state purchasing agent for posting on the state purchasing agent's website. In each case, the notice shall identify, at a minimum:

(1) the parties to the proposed contract;

(2) the nature and quantity of the service, construction or item of tangible personal property being contracted for; and

(3) the contract amount.

B. Any qualified potential contractor that was not selected for a proposed sole source contract may protest the selection in writing, within fifteen calendar days after the notice of intent to award the contract was posted by the state purchasing agent or central purchasing office, by submitting the protest to the state purchasing agent or central purchasing office, as appropriate. The state purchasing agent or central purchasing office shall then reconsider its selection.

History: Laws 2013, ch. 40, § 6; 2019, ch. 153, § 4.

13-1-127. Emergency procurement; required conditions; limitations; notice.

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

(1) is needed immediately to:

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

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

(2) cannot be acquired through normal procurement methods.

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

(1) in making an emergency procurement, shall:

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

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

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

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

(1) the state purchasing agent shall post notice of the procurement on its website; or

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

D. The state purchasing agent or a central purchasing office that makes an emergency procurement to plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event shall account for the money spent in making the procurement and report on that accounting to the legislative finance committee and the department of finance and administration within sixty days after the end of the fiscal year in which the procurement was made.

History: Laws 1984, ch. 65, § 100; 1987, ch. 348, § 10; 2002, ch. 84, § 1; 2013, ch. 40, § 3; repealed and reenacted by Laws 2019, ch. 153, § 5.

13-1-128. Sole source and emergency procurements; publication of award to agency web site and sunshine portal; content and submission of record.

A. Prior to award of a sole source procurement contract, the state purchasing agent or central purchasing office shall:

(1) provide the information described in Subsection E of this section to the department of information technology for posting on the sunshine portal; and

(2) forward the same information to the legislative finance committee.

B. Prior to the award of a sole source procurement contract, the local public body central purchasing office shall post the information described in Subsection E of this section on the local public body web site, if one exists.

C. Within three business days of awarding an emergency procurement contract, the awarding central purchasing office within a state agency shall:

(1) provide the information described in Subsection E of this section to the department of information technology for posting on the sunshine portal; and

(2) forward the same information to the legislative finance committee.

D. Within three business days of awarding an emergency procurement contract, the local public body central purchasing office shall post the information described in Subsection E of this section on the local public body web site, if one exists.

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

(1) the contractor's name and address;

(2) the amount and term of the contract;

(3) a listing of the services, construction or items of tangible personal property procured under the contract;

(4) whether the contract was a sole source or emergency procurement contract; and

(5) the justification for the procurement method.

History: Laws 1984, ch. 65, § 101; 1987, ch. 348, § 11; 2013, ch. 40, § 4.

13-1-129. Procurement under existing contracts.

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

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

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

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

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

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

History: Laws 1984, ch. 65, § 102; 1991, ch. 254, § 1.

13-1-130. Purchases; antipoverty program business.

A. Without regard to the bid requirements of Section 75 [13-1-102 NMSA 1978] of the Procurement Code, a central purchasing office may negotiate a contract for materials grown, processed or manufactured in this state by small businesses, cooperatives, community self-determination corporations or other such enterprises

designed and operated to alleviate poverty conditions and aided by state or federal antipoverty programs or through private philanthropy.

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

History: Laws 1984, ch. 54, § 103.

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

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

History: Laws 1984, ch. 65, § 104; 1987, ch. 348, § 12.

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

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

History: Laws 1984, ch. 65, § 105.

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

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

History: Laws 1984, ch. 65, § 106.

13-1-134. Prequalification of bidders.

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

History: Laws 1984, ch. 65, § 107.

13-1-135. Cooperative procurement authorized.

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

B. Notwithstanding the provisions of Subsection A of this section, a cooperative procurement agreement providing for mutually held funds or for other terms and conditions involving public funds or property included in Section 11-1-4 NMSA 1978 shall be entered into pursuant to the provisions of the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978].

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

History: Laws 1984, ch. 65, § 108; 1999, ch. 167, § 1.

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

A. Beginning July 1, 1995, each central purchasing office shall, whenever its price, quality, quantity, availability and delivery requirements are met, purchase recycled content goods through contracts established by the purchasing division of the general services department or with other central purchasing offices.

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

History: 1978 Comp., § 13-1-135.1, enacted by Laws 1995, ch. 60, § 2.

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

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

History: Laws 1984, ch. 65, § 109.

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

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

A. in accordance with an agreement entered into with the approval of the state board of finance or the data processing and data communications planning council [information technology commission systems council]; or

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

History: Laws 1984, ch. 65, § 110.

13-1-138. Cost or pricing data required.

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

History: Laws 1984, ch. 65, § 111.

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

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

History: Laws 2007, ch. 312, § 2.

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

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

History: Laws 2007, ch. 366, § 2.

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

The cost or pricing data relating to the award of a contract shall not be required when:

A. the procurement is based on competitive sealed bid;

B. the contract price is based on established catalogue prices or market prices;

C. the contract price is set by law or regulation;

D. the contract is for professional services; or

E. the contract is awarded pursuant to the Public Building Energy Efficiency Act [Public Facility Energy Efficiency and Water Conservation Act] [Chapter 6, Article 23 NMSA 1978].

History: Laws 1984, ch. 65, § 112; 1993, ch. 231, § 12.

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

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

History: Laws 1984, ch. 65, § 113.

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

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

History: Laws 1984, ch. 65, § 114.

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

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

History: Laws 1984, ch. 65, § 115.

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

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

History: Laws 1984, ch. 65, § 116.

13-1-144. Cost or price analysis.

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

History: Laws 1984, ch. 65, § 117.

13-1-145. Cost principles; regulations.

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

History: Laws 1984, ch. 65, § 118.

13-1-146. Requirement for bid security.

Bid security shall be required of bidders or offerors for construction contracts when the price is estimated by the procurement officer to exceed twenty-five thousand dollars ($25,000). Bid security in an amount equal to at least five percent of the amount of the bid shall be a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the state agency or a local public body.

History: Laws 1984, ch. 65, § 119; 2007, ch. 141, § 9.

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

A. Except to the extent necessary to ensure that a surety company meets the requirements of Subsection A of Section 13-4-18 NMSA 1978, an employee of the state or its political subdivisions, or a person acting or purporting to act on behalf of that employee, shall not require a bidder or an offeror in a procurement for a construction contract pursuant to the Procurement Code to make application or furnish financial data for a surety bond or to obtain a surety bond from a particular surety company, insurance company, broker or agent in connection with the bid or proposal.

B. A person who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2003, ch. 305, § 1.

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

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

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

History: Laws 1984, ch. 65, § 120.

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

A. Bid and performance bonds or other security may be required for contracts for items of tangible personal property or services as the state purchasing agent or a central purchasing office deems necessary to protect the interests of the state agency or a local public body. Any such bonding requirements shall not be used as a substitute for a determination of the responsibility of a bidder or offeror.

B. As to performance and payment bonds for construction contracts, see the requirements of Section 13-4-18 NMSA 1978.

History: Laws 1984, ch. 65, § 121; 1987, ch. 348, § 13.

13-1-148.1. Bonding of subcontractors.

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

History: Laws 2005, ch. 99, § 1; 2007, ch. 265, § 1.

13-1-149. Types of contracts.

Subject to the limitations of Sections 123 through 127 [13-1-150 to 13-1-154 NMSA 1978] of the Procurement Code, any type of contract, including but not limited to definite quantity contracts, indefinite quantity contracts and price agreements, which will promote the best interests of the state agency or a local public body may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited except for the purchase of insurance. A cost-reimbursement contract may be used when such contract is likely to be less costly or it is impracticable to otherwise obtain the services, construction or items of tangible personal property required.

History: Laws 1984, ch. 65, § 122.

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

A. A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars ($25,000), may be entered into for any period of time deemed to be in the best interests of the state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is twenty-five thousand dollars ($25,000) or

more, the term shall not exceed ten years, including all extensions and renewals, except that for a contract entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act [Chapter 6, Article 23 NMSA 1978], the term shall not exceed twenty-five years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. A contract for professional services may not exceed four years, including all extensions and renewals, except for the following:

(1) services required to support or operate federally certified medicaid, financial assistance and child support enforcement management information or payment systems;

(2) services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997, Chapter 125;

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

(4) services relating to the implementation, operation and administration of the Education Trust Act [Chapter 21, Article 21K NMSA 1978];

(5) services relating to measurement and verification of conservation-related cost savings and utility cost savings pursuant to the Public Facility Energy Efficiency and Water Conservation Act;

(6) services relating to the design and engineering of a state public works project:

(a) for a period not to exceed the requisite time for project completion and a subsequent warranty period; and

(b) upon approval of the secretary of finance and administration; and

(7) services relating to the design and engineering of a regional water project with an estimated cost of more than five hundred million dollars ($500,000,000):

(a) for a period not to exceed the requisite time for project completion and a subsequent warranty period; and

(b) upon approval of the secretary of finance and administration.

History: Laws 1984, ch. 65, § 123; 1987, ch. 348, § 14; 1993, ch. 225, § 1; 1993, ch. 231, § 13; 1998, ch. 27, § 1; 2001, ch. 247, § 11; 2001, ch. 270, § 1; 2009, ch. 138, § 5; 2017, ch. 55, § 1; 2018, ch. 43, § 1; 2023, ch. 40, § 1.

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

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

A. the estimated requirements cover the period of the contract and are reasonably firm and continuing; and

B. the contract will serve the best interests of the state agency or a local public body.

History: Laws 1984, ch. 65, § 124.

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

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

History: Laws 1984, ch. 65, § 125.

13-1-152.1. Water storage tank service contracts.

A municipality may, by direct negotiation subsequent to receiving responses to requests for proposals, enter into a multiyear service contract for the engineering, repair and maintenance of a water storage tank and the appurtenant facilities owned, controlled or operated by the municipality; provided that the contract for services includes provisions that:

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

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

C. provide that if, on the date of commencement of the contract, the water storage tank or appurtenant facilities require engineering, repair or service in order to bring the tank or facilities into compliance with federal, state or local requirements, the party contracting with the municipality shall provide the engineering, repair or service and that

the cost of the work necessary to ensure such compliance shall be itemized separately and charged to the municipality in payments spread over a period of not less than three years from the date of commencement of the contract.

History: Laws 2013, ch. 164, § 1.

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

A multiple source award may be made pursuant to Section 13-1-110 NMSA 1978 or Section 1 of this 2007 act when awards to two or more bidders or offerors are necessary for adequate delivery or service. Multiple source awards shall not be made when a single award will meet the needs of the state agency or a local public body without sacrifice of economy or service. Awards shall be limited to the least number of suppliers in one geographical area necessary to meet the requirements of the state agency or a local public body. A multiple source award shall be based upon the lowest responsible bid or proposal received in each geographical area unless the award is made in response to a qualifications-based proposal.

History: Laws 1984, ch. 65, § 126; 2007, ch. 312, § 5.

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

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

History: Laws 1984, ch. 65, § 127.

13-1-154.1. Multiple source contracts; architectural and engineering services contracts; indefinite quantity construction contracts.

A. A state agency or local public body may procure multiple architectural or engineering services contracts for multiple projects under a single qualifications-based request for proposals; provided that the total amount of multiple contracts and all renewals for a single contractor does not exceed seven million five hundred thousand dollars ($7,500,000) over four years and that a single contract, including any renewals, does not exceed six hundred fifty thousand dollars ($650,000).

B. A state agency or local public body may procure multiple indefinite quantity construction contracts pursuant to a price agreement for multiple projects under a single request for proposals; provided that the total amount of a contract and all renewals does not exceed twelve million five hundred thousand dollars ($12,500,000) over three years and the contract provides that any one purchase order under the contract may not exceed four million dollars ($4,000,000).

C. A state agency or local public body may make procurements in accordance with the provisions of Subsection A or B of this section if:

(1) the advertisement and request for proposals states that multiple contracts may or will be awarded, states the number of contracts that may or will be awarded and describes the services or construction to be performed under each contract;

(2) there is a single selection process for all of the multiple contracts, except that for each contract there may be a separate final list and a separate negotiation of contract terms; and

(3) each of the multiple contracts for architectural or engineering services has a term not exceeding four years, or for construction, has a term not exceeding three years, each including all extensions and renewals.

D. A contract to be awarded pursuant to this section to a firm that is currently performing under a contract issued pursuant to this section shall not cause the total amount of all contracts issued pursuant to this section to that firm to exceed:

(1) seven million five hundred thousand dollars ($7,500,000) in any four-year period for architectural or engineering services; or

(2) twelve million five hundred thousand dollars ($12,500,000) in any three-year period for construction.

E. Procurement pursuant to this section is subject to the limitations of Sections 13-1-150 through 13-1-154 NMSA 1978.

F. A state agency and a local public body, not including an agency of the legislative or judicial branch of state government, shall report to the legislative finance committee on an annual basis and to the purchasing division of the general services department on, at minimum, a quarterly basis the aggregate amount of contracts for each contractor and the corresponding amounts to be spent under each multiple source contract pursuant to this section. The general services department may promulgate rules regarding reporting to the department pursuant to this subsection.

History: Laws 2007, ch. 312, § 1; 2013, ch. 99, § 1; 2017, ch. 92, § 1; 2020, ch. 66, § 1.

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

A. A central purchasing office, when procuring used items of tangible personal property the estimated cost of which exceeds five thousand dollars ($5,000), shall request bids as though the items were new, adding specifications that permit used items under conditions to be outlined in the bid specifications, including but not limited to

requiring a written warranty for at least ninety days after date of delivery and an independent "certificate of working order" by a qualified mechanic or appraiser.

B. Notwithstanding the provisions of Subsection A of this section, the purchasing office for a county may purchase, at public or private auctions conducted by established, recognized commercial auction companies, used heavy equipment, having an estimated cost that exceeds five thousand dollars ($5,000), for use in construction and maintenance of county streets, roads and highways, subject to the following provisions:

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

(2) the value of each piece of equipment shall be appraised prior to the auction by a qualified disinterested appraiser retained and paid by the county, who shall make a written appraisal report stating the basis for the appraisal, including the age, condition and comparable sales, and stating that the appraiser has exercised his independent judgment without prior understanding or agreement with any person as to a target value or range of value;

(3) an independent "certificate of working condition" shall be obtained prior to the auction from a qualified mechanic who shall have made a detailed inspection of each major working or major functional part and certified the working condition of each; and

(4) the price paid, including all auction fees and buyer's surcharges, shall not exceed the appraised value.

History: Laws 1984, ch. 65, § 128; 1987, ch. 348, § 15; 1995, ch. 197, § 1.

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

A. A central purchasing office, when trading in or exchanging used items of tangible personal property the estimated value of which exceeds five thousand dollars ($5,000) as part-payment on the procurement of new items of tangible personal property, shall:

(1) have an independent appraisal made of the items to be traded in or exchanged. The appraisal shall be in writing, shall be made part of the procurement file and shall be a public record. The invitation for bids or request for proposals shall contain notice to prospective bidders or offerors of the description and specifications of the items to be traded in or exchanged, the appraised value of the items to be traded in or exchanged and the location where the items to be traded in or exchanged may be inspected; or

(2) have two written quotes for purchase of the property at a specified price.

B. Award shall be based upon the net bid. Bidders or offerors shall compute their net bid or offer by deducting the appraised value or highest quote of the items to be traded in or exchanged from the gross bid or offer on the new items of tangible personal property to be procured. If an amount offered in trade is less than the appraised value or the highest quote but is found to be a fair reflection of the current market, representative of the condition of the items of tangible personal property and in the best interest of the agency, the bid or offer may be accepted. Documentation of the terms of acceptance shall be in writing, shall be made a part of the procurement file and shall be a public record.

History: Laws 1984, ch. 65, § 129; 1987, ch. 348, § 16.

13-1-156.1. Trade, exchange or disposal of tangible personal property; state-owned railroad.

A. In addition to other methods of disposal authorized by law, the tangible personal property of a state-owned railroad may be traded or exchanged for new items of tangible personal property, or disposed of, by the department of transportation or a local public body that manages the railroad, if authorized by the department of transportation pursuant to the provisions of this section. The central purchasing office may require in a request for proposals that quotes be submitted for the purchase or disposal of the tangible personal property to be traded in, exchanged or disposed of. The tangible personal property may be traded, exchanged or disposed of pursuant to the terms of the contract with the responsible offeror who is awarded the contract if an amount offered in trade or exchange, or amount for disposal, in the proposal is found by the central purchasing office to be:

(1) a fair reflection of the current market value;

(2) representative of the condition of the tangible personal property;

(3) in the best interest of the agency; and

(4) included as an itemized adjustment in the price in the case of a trade or exchange, or itemized cost in the case of disposal.

B. All terms of the trade, exchange or disposal of the items of tangible personal property shall be part of the contract.

History: Laws 2013, ch. 149, § 1.

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

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

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

History: Laws 1984, ch. 65, § 130.

13-1-158. Payments for purchases.

A. No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code.

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

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

D. If the central purchasing office or the using agency finds that the services, construction or items of tangible personal property are not acceptable, it shall, within thirty days of the date of receipt of written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property

delivered on site, provide to the contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the contractor may proceed to provide remedial action.

E. Late payment charges that differ from the provisions of Subsection C of this section may be assessed if specifically provided for by contract or pursuant to tariffs approved by the New Mexico public utility commission or the state corporation commission [public regulation commission].

History: Laws 1984, ch. 65, § 131; 1987, ch. 348, § 17; 1989, ch. 334, § 1; 1993, ch. 282, § 15; 1997, ch. 104, § 1; 1997, ch. 222, § 1.

13-1-159. Right to inspect plant.

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

History: Laws 1984, ch. 65, § 132.

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

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

History: Laws 1984, ch. 65, § 133.

13-1-161. Contract audit.

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

History: Laws 1984, ch. 65, § 134.

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

A. There is created a "state procurement standards and specifications committee." The state purchasing agent is a member and the chairman of the committee.

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

(1) one representative of the state highway department;

(2) one representative of the health and environment department;

(3) one representative of the corrections department;

(4) one person who is an elected county official or is a full-time county employee;

(5) one person who is an elected municipal official or is a full-time municipal employee;

(6) one person who is an elected district school board member or is a full-time school employee;

(7) two persons representing other state departments; and

(8) two persons representing the private sector.

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

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

History: Laws 1984, ch. 65, § 135.

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

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

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

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

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

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

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

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

History: Laws 1984, ch. 65, § 136.

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

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

History: Laws 1984, ch. 65, § 137; 2007, ch. 345, § 2.

13-1-165. Brand-name specification; use.

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

History: Laws 1984, ch. 65, § 138.

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

The state purchasing agent or a central purchasing office shall seek to identify sources from which the designated brand-name items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 99 [13-1-126 NMSA 1978] of the Procurement Code.

History: Laws 1984, ch. 65, § 139.

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

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

History: Laws 1984, ch. 65, § 140.

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

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

History: Laws 1984, ch. 65, § 141.

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

A. All using agency requests for procurement shall contain:

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

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

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

History: Laws 1984, ch. 65, § 142.

13-1-170. Uniform contract clauses.

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

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

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

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

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

(3) liquidated damages;

(4) permissible excuses for delay or nonperformance;

(5) termination of the contract for default;

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

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

(8) identification of subcontractors by bidders in bids; and

(9) uniform subcontract clauses in contracts.

B. A state agency, local public body or central purchasing office with the power to issue regulations shall require by regulation that contracts include a clause imposing late payment charges against the state agency or local public body in the amount and under the conditions stated in Section 13-1-158 NMSA 1978.

History: Laws 1984, ch. 65, § 143; 1997, ch. 104, § 2; 1997, ch. 222, § 2.

13-1-171. Price adjustments.

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

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

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

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

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

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

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

History: Laws 1984, ch. 65, § 144; 1987, ch. 348, § 18.

13-1-172. Right to protest.

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

History: Laws 1984, ch. 65, § 145; 1987, ch. 348, § 19.

13-1-173. Procurements after protest.

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

History: Laws 1984, ch. 65, § 146.

13-1-174. Authority to resolve protests.

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

History: Laws 1984, ch. 65, § 147; 1987, ch. 348, § 20.

13-1-175. Protest; determination.

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

A. state the reasons for the action taken; and

B. inform the protestant of the right to judicial review of the determination pursuant to Section 156 [13-1-183 NMSA 1978] of the Procurement Code.

History: Laws 1984, ch. 65, § 148.

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

A copy of the determination issued under Section 148 [13-1-175 NMSA 1978] of the Procurement Code shall immediately be mailed to the protestant and other bidders or offerors involved in the procurement.

History: Laws 1984, ch. 65, § 149.

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

A. The state purchasing agent or a central purchasing office, after consultation with the using agency, may suspend a person from consideration for award of contracts if the state purchasing agent or central purchasing office, after reasonable investigation, finds that a person has engaged in conduct that constitutes cause for debarment pursuant to Section 13-1-178 NMSA 1978.

B. The term of a suspension pursuant to this section shall not exceed three months; however, if a person, including a bidder, offeror or contractor, has been charged with a criminal offense that would be a cause for debarment pursuant to Section 13-1-178 NMSA 1978, the suspension shall remain in effect until the criminal charge is resolved and the person is debarred or the reason for suspension no longer exists.

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

D. As used in this section, the terms "person", "bidder", "offeror" and "contractor" include principals, officers, directors, owners, partners and managers of the person, bidder, offeror or contractor.

History: Laws 1984, ch. 65, § 150; 2013, ch. 41, § 2.

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

A. The causes for debarment or suspension occurring within three years of the date final action on a procurement is taken include but are not limited to the following:

(1) criminal conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;

(2) civil judgment against a bidder, offeror or contractor for a civil violation related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;

(3) conviction of a bidder, offeror or contractor under state or federal statutes related to embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, making false statements or receiving stolen property or for violation of federal or state tax laws;

(4) conviction of a bidder, offeror or contractor under state or federal antitrust statutes relating to the submission of offers;

(5) criminal conviction against a bidder, offeror or contractor for any other offense related to honesty, integrity or business ethics;

(6) civil judgment against a bidder, offeror or contractor for a civil violation related to honesty, integrity or business ethics;

(7) civil judgment against a bidder, offeror or contractor pursuant to the Unfair Practices Act [Chapter 57, Article 12 NMSA 1978];

(8) violation by a bidder, offeror or contractor of contract provisions, as set forth in this paragraph, of a character that is reasonably regarded by the state purchasing agent or a central purchasing office to be so serious as to justify suspension or debarment action, including:

(a) willful failure to perform in accordance with one or more contracts; or

(b) a history of failure to perform or of unsatisfactory performance of one or more contracts; provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose debarment; and provided further that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(9) any other cause that the state purchasing agent or a central purchasing office determines to be so serious and compelling as to affect responsibility as a contractor; or

(10) for a willful violation by a bidder, offeror or contractor of the provisions of the Procurement Code.

B. As used in this section, the terms "bidder", "offeror" and "contractor" include principals, officers, directors, owners, partners and managers of the bidder, offeror or contractor.

History: Laws 1984, ch. 65, § 151; 2013, ch. 41, § 3.

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

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

A. state the reasons for the action taken; and

B. inform the debarred or suspended business involved of its rights to judicial review pursuant to Section 156 [13-1-183 NMSA 1978] of the Procurement Code.

History: Laws 1984, ch. 65, § 152.

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

A copy of the determination made pursuant to Section 13-1-179 NMSA 1978 shall be:

A. mailed to the last known address on file with the state purchasing agent or central purchasing office, by first class mail, within three business days after issuance of the written determination; or

B. transmitted electronically within three business days after issuance of the written determination.

History: Laws 1984, ch. 65, § 153; 2013, ch. 41, § 4.

13-1-180.1. Continuation of current contracts; restrictions on subcontracting.

A. Notwithstanding the debarment, suspension or proposed debarment of a person, a state agency or local public body may continue contracts or subcontracts in existence at the time that the person is debarred, suspended or proposed for debarment unless the governing authority of the state agency or local public body directs otherwise.

B. Unless the governing authority of a state agency or local public body issues a written determination based on compelling reasons holding otherwise, a person that has been debarred or suspended or whose debarment has been proposed shall not, after the date that the person is debarred, suspended or proposed for debarment:

(1) incur financial obligations, including those for materials, services and facilities, unless the person is specifically authorized to do so under the terms and conditions of the person's contract; or

(2) extend the duration of the person's contract by adding new work, by exercising options or by taking other action.

C. Unless pursuant to written authorization based on the compelling reasons of the governing authority of a state agency or local public body, the state purchasing agent or a central purchasing office shall not consent to enter a subcontract subject to the Procurement Code with a person that has been debarred, suspended or proposed for debarment.

D. A person that has entered into a contract subject to the Procurement Code shall not subcontract with another person that has been debarred, suspended or proposed for debarment without the written authorization of the state purchasing agent or a central purchasing office. A person that wishes to subcontract with another person that has been debarred, suspended or proposed for debarment shall make a request to the applicable state agency or local public body that includes the following:

(1) the name of the proposed subcontractor;

(2) information about the proposed subcontractor's debarment, suspension or proposed debarment;

(3) the requester's compelling reasons for seeking a subcontract with the proposed subcontractor; and

(4) a statement of how the person will protect the interests of the state agency or local public body considering the proposed subcontractor's debarment, suspension or proposed debarment.

History: Laws 2013, ch. 41, § 5.

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

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

History: Laws 1984, ch. 65, § 154; 2002, ch. 62, § 1.

13-1-182. Ratification or termination after execution of contract.

If after the execution of a valid, written contract by all parties and necessary approval authorities, the state purchasing agent or a central purchasing office makes a determination that a solicitation or award of the contract was in violation of law and if the business awarded the contract did not act fraudulently or in bad faith:

A. the contract may be ratified, affirmed and revised to comply with law, provided that a determination is made that doing so is in the best interests of a state agency or a local public body; or

B. the contract may be terminated, and the contractor shall be compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.

History: Laws 1984, ch. 65, § 155; 2002, ch. 62, § 2.

13-1-183. Judicial review.

All actions authorized by the Procurement Code for judicial review of a determination shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1984, ch. 65, § 156; 1998, ch. 55, § 24; 1999, ch. 265, § 24.

13-1-184. Assistance to small business; policy.

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

History: Laws 1984, ch. 65, § 157.

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

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

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

C. The state purchasing agent and central purchasing offices shall take all reasonable action to ensure that small businesses are solicited on each procurement for which they appear to be qualified.

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

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

History: Laws 1984, ch. 65, § 158.

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

The state purchasing agent or central purchasing office may reduce bid bond, performance bond or payment bond requirements authorized by the Procurement Code to encourage procurement from small businesses.

History: Laws 1984, ch. 65, § 159.

13-1-187. Small business; report to the legislature.

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

History: Laws 1984, ch. 65, § 160.

13-1-188. Public acquisition of American-made motor vehicles required.

A state agency shall only acquire motor vehicles assembled in North America except for gas-electric hybrid vehicles until these vehicles are assembled in North America; provided that this section shall not apply to motor vehicles used for law enforcement purposes. For the purposes of this section, "motor vehicle" means a light-duty vehicle under eight thousand five hundred pounds.

History: Laws 1984, ch. 65, § 161; 2002, ch. 32, § 1; 2013, ch. 217, § 1.

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

A. All state agencies shall purchase and all local public bodies may purchase items of tangible personal property and services offered pursuant to the provisions of the Corrections Industries Act [33-8-1 to 33-8-15 NMSA 1978].

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

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

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

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

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

History: Laws 1984, ch. 65, § 162; 1987, ch. 5, § 1.

13-1-190. Unlawful employee participation prohibited.

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

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

History: Laws 1984, ch. 65, § 163; 1989, ch. 264, § 27; 2009, ch. 66, § 12.

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

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

History: Laws 1984, ch. 65, § 164.

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

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

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

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

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

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

F. A solicitation or proposed award for a proposed contract may be canceled pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 if:

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

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

G. As used in this section:

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

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

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

(b) an owner of a prospective contractor;

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

(4) "prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract; and

(5) "representative of the prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

History: Laws 2006, ch. 81, § 1; 2007, ch. 234, § 2.

13-1-192. Contingent fees prohibited.

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

History: Laws 1984, ch. 65, § 165.

13-1-193. Contemporaneous employment prohibited.

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

History: Laws 1984, ch. 65, § 166.

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

A state agency or a local public body may grant a waiver from unlawful employee participation pursuant to Section 163 [13-1-190 NMSA 1978] of the Procurement Code, or contemporaneous employment pursuant to Section 166 [13-1-193 NMSA 1978] of the Procurement Code, upon making a determination that:

A. the contemporaneous employment or financial interest of the employee has been publicly disclosed;

B. the employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and

C. the employee participation is in the best interests of the state agency or a local public body.

History: Laws 1984, ch. 65, § 167.

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

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

History: Laws 1984, ch. 65, § 168.

13-1-196. Civil penalty.

Any person, firm or corporation that knowingly violates any provision of the Procurement Code is subject to a civil penalty of not more than one thousand dollars ($1,000) for each procurement in violation of any provision of the Procurement Code. The district attorney in the jurisdiction in which the violation occurs or the state ethics commission is empowered to bring a civil action for the enforcement of any provision of the Procurement Code; provided that the commission may refer a matter for enforcement to the attorney general or the district attorney in the jurisdiction in which the violation occurred. Any penalty collected under the provisions of this section shall be credited to the general fund of the political subdivision in which the violation occurred and on whose behalf the suit was brought.

History: Laws 1984, ch. 65, § 169; 2019, ch. 86, § 34.

13-1-196.1. State ethics commission jurisdiction.

The state ethics commission may investigate complaints against a contractor who has a contract with a state agency or a person who has submitted a competitive sealed proposal or competitive sealed bid for a contract with a state agency. The state ethics commission may impose the civil penalties authorized in Sections 13-1-196 through 13-1-198 NMSA 1978 pursuant to the provisions of those sections.

History: Laws 2019, ch. 86, § 33.

13-1-197. Recovery of value transferred or received; additional civil penalty.

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

History: Laws 1984, ch. 65, § 170.

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

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

History: Laws 1984, ch. 65, § 171.

13-1-199. Penalties.

Any business or person that willfully violates the Procurement Code is guilty of:

A. a misdemeanor if the transaction involves fifty thousand dollars ($50,000) or less; or

B. a fourth degree felony if the transaction involves more than fifty thousand dollars ($50,000).

History: Laws 1984, ch. 65, § 172; 2013, ch. 40, § 5.

ARTICLE 1A
Purchasing Discounts

13-1A-1. Short title.

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

History: Laws 1983, ch. 164, § 1.

13-1A-2. Purpose.

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

History: Laws 1983, ch. 164, § 2.

13-1A-3. Definition.

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

History: Laws 1983, ch. 164, § 3.

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

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

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

History: Laws 1983, ch. 164, § 4.

ARTICLE 1B
Alternative Fuel Acquisition

13-1B-1. Short title.

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

History: Laws 1992, ch. 58, § 1; 2002, ch. 32, § 2.

13-1B-2. Definitions.

As used in the Alternative Fuel Acquisition Act:

A. "alternative fuel" means natural gas, liquefied petroleum gas, electricity, hydrogen, a fuel mixture containing not less than eighty-five percent ethanol or

methanol, a fuel mixture containing not less than twenty percent vegetable oil or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion;

B. "conventional fuel" means gasoline or diesel fuel;

C. "department" means the energy, minerals and natural resources department;

D. "fund" means the alternative fuel acquisition loan fund;

E. "heavy duty vehicle" means a vehicle weighing more than twenty-six thousand pounds;

F. "light duty vehicle" means a vehicle weighing not more than fourteen thousand pounds;

G. "medium duty vehicle" means a vehicle weighing more than fourteen thousand pounds but not more than twenty-six thousand pounds; and

H. "political subdivision" means a county, municipality or school district.

History: Laws 1992, ch. 58, § 2; 1994, ch. 130, § 1; 1995, ch. 160, § 1; 1997, ch. 24, § 2; 1998, ch. 22, § 2; 2002, ch. 32, § 3; 2018, ch. 53, § 1.

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

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

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

(2) are hybrid vehicles;

(3) are capable of operating on alternative fuel with either bi-fuel capability or dedicated engine configurations; or

(4) are plug-in electric vehicles.

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

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

(2) alternative fuels are unavailable at a cost within fifteen percent of the cost of conventional fuel within the normal driving range of these vehicles; or

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

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

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

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

History: Laws 1992, ch. 58, § 3; 1994, ch. 130, § 2; 1995, ch. 160, § 2; 2002, ch. 32, § 4; 2009, ch. 110, § 1; 2018, ch. 53, § 2.

13-1B-4. Revolving loan fund created; administration.

A. The "alternative fuel acquisition loan fund" is created in the state treasury as a revolving loan fund. The department shall administer the fund and make loans from the fund in accordance with the Alternative Fuel Acquisition Act.

B. The fund shall consist of earnings on balances in the fund, receipts from the repayment of loans made pursuant to the Alternative Fuel Acquisition Act and appropriations made by the legislature.

C. The fund balance shall not exceed five million dollars ($5,000,000), and any balance in the fund of five million dollars ($5,000,000) or less shall not revert to the general fund at the end of any fiscal year. Interest on cash balances and repayment of loans in excess of the amount necessary to maintain the fund balance at five million dollars ($5,000,000) shall be deposited in the general fund.

D. Administrative costs of the fund shall be paid by the department until interest revenues in the fund are sufficient to cover administrative costs, at which time administrative costs may be paid from the fund.

E. Expenditures from the fund shall be supported by loan documents evidencing the intent of the borrower to repay the loan. The original loan documents shall be filed with the department of finance and administration, and a copy shall be filed with the department.

History: Laws 1992, ch. 58, § 4; 2002, ch. 32, § 5.

13-1B-5. Revolving loan fund; loans made from the fund.

A. Money available in the fund may be loaned by the department to reimburse the expenses incurred in acquiring vehicles of the agencies and departments of state government, political subdivisions and educational institutions from gasoline to alternative fuel.

B. A state agency or department, a political subdivision or an educational institution to which a loan is made shall demonstrate the ability to pay back the loan within seven years of the date that its vehicles are acquired.

C. Use of the fund shall be limited to purchases of light duty, medium duty or heavy duty vehicles that use natural gas, liquified petroleum gas, electricity or hydrogen.

D. The maximum amount loaned to acquire a vehicle shall not exceed the actual incremental cost of acquiring the vehicle or:

(1) five thousand dollars ($5,000) for a light duty vehicle;

(2) ten thousand dollars ($10,000) for a medium duty vehicle; or

(3) twenty thousand dollars ($20,000) for a heavy duty vehicle.

History: Laws 1992, ch. 58, § 5; 1994, ch. 130, § 3; 2002, ch. 32, § 6; 2018, ch. 53, § 3.

13-1B-6. Loan program; duties of the department.

A. The department shall:

(1) administer the provisions of the Alternative Fuel Acquisition Act, except that the provisions of Section 13-1B-3 NMSA 1978 shall be administered by the commission on higher education and the state department of public education for their respective programs;

(2) establish a program to make loans to the agencies and departments of state government, political subdivisions and educational institutions, individually or jointly, to facilitate the acquisition of vehicles of the agencies and departments of state government, political subdivisions and educational institutions in accordance with the Alternative Fuel Acquisition Act;

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

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

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

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

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

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

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

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

History: Laws 1992, ch. 58, § 6; 1994, ch. 130, § 4; 2002, ch. 32, § 7.

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

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

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

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

D. Loans shall be made only for eligible items.

History: Laws 1992, ch. 58, § 7; 2002, ch. 32, § 8; 2018, ch. 53, § 4.

ARTICLE 1C
State Use Act

13-1C-1. Short title.

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

History: Laws 2005, ch. 334, § 1.

13-1C-2. Purpose.

The purpose of the State Use Act is to encourage and assist persons with disabilities to achieve maximum personal independence through useful and productive employment by ensuring an expanded and constant market for services delivered by persons with disabilities, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and entitlements.

History: Laws 2005, ch. 334, § 2.

13-1C-3. Definitions.

As used in the State Use Act:

A. "central nonprofit agency" means a nonprofit agency approved pursuant to rules of the council to facilitate the equitable distribution of orders for the services of:

(1) qualified individuals; and

(2) community rehabilitation programs;

B. "community rehabilitation program" means a nonprofit entity:

(1) that is organized under the laws of the United States or this state, operated in the interest of persons with disabilities and operated so that no part of the income of which inures to the benefit of any shareholder or other person;

(2) that complies with applicable occupational health and safety standards as required by federal or state law; and

(3) that, in the provision of services, whether or not procured under the State Use Act, employs during the state fiscal year at least seventy-five percent persons with disabilities in direct labor for the provision of services;

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

D. "direct labor" means all work directly relating to the provision of services, but not work required for or relating to supervision, administration or inspection;

E. "local public body" means a political subdivision of the state and the political subdivision's agencies, instrumentalities and institutions;

F. "persons with disabilities" means persons who have a mental or physical impairment that constitutes or results in a substantial impediment to employment as defined by the federal Rehabilitation Act of 1973;

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

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

I. "state purchasing agent" means the director of the purchasing division of the general services department.

History: Laws 2005, ch. 334, § 3.

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

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

(1) the state purchasing agent or the agent's designee;

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

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

(4) two persons with disabilities, a person who is familiar with employment needs of persons with disabilities and with current pricing and marketing of goods and services and two persons who represent community rehabilitation programs that provide

employment services to persons with disabilities, all selected by mutual agreement of the persons appointed in Paragraphs (1), (2) and (3) of this subsection.

B. Council members shall be appointed for three-year terms. Vacancies shall be filled in the same manner as for original appointments. A member appointed to fill a vacancy shall serve for the remainder of the term for that vacancy. Council members shall continue to serve beyond the expiration of their terms until new members are appointed.

C. The council shall elect a chair from among its members. Seven members of the council shall constitute a quorum in order to conduct the council's business.

D. Except for the regular pay of public employee members, council members shall serve without compensation or cost reimbursement.

History: Laws 2005, ch. 334, § 4.

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

A. The council shall adopt rules in accordance with the procedure set out in Subsection E of Section 9-1-5 NMSA 1978 that:

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

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

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

(4) establish a procedure to certify eligible community rehabilitation programs and qualified individuals that have services suitable for procurement by state agencies and local public bodies that will be placed on the list established in Paragraph (2) of this subsection;

(5) establish a procedure for approval of a central nonprofit agency that shall hold contracts, facilitate the equitable distribution of orders for services to be procured

by state agencies and local public bodies and market approved services to state agencies and local public bodies;

(6) establish procedures for the operation of the approved central nonprofit agency, including a fee structure for its services;

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

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

B. The council shall, not later than one hundred eighty days following the close of each fiscal year, submit to the governor, the legislature and each community rehabilitation program a report that includes the names of the council members serving during the preceding fiscal year, the dates of council meetings during that year and any recommendations for changes to the State Use Act.

History: Laws 2005, ch. 334 , § 5.

13-1C-6. Existing vendor exclusion.

Services provided pursuant to and facilities covered by Section 22-14-27 NMSA 1978 are excluded from the State Use Act.

History: Laws 2005, ch. 334, § 6.

13-1C-7. Procurement by state agencies and local public bodies; cooperative agreements.

A. A state agency or local public body intending to procure a service on a list published by the council shall, in accordance with rules of the council, procure the service at the price established by the council if the service is available within the period required by the state agency or local public body. Procurement pursuant to the State Use Act [Chapter 14, Article 4 NMSA 1978] is exempt from the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

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

History: Laws 2005, ch. 334, § 7.

ARTICLE 2
Freight Bills - Audit by State (Repealed.)

13-2-1. Repealed.

ARTICLE 3
Public Printing Contracts (Repealed.)

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

ARTICLE 4
Public Works Contracts

13-4-1. Public works contracts.

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

History: Laws 1933, ch. 50, § 1; 1941 Comp., § 6-501; 1953 Comp., § 6-6-1; Laws 1965, ch. 185, § 1; 1984, ch. 66, § 1.

13-4-1.1. Definitions; construction contract; contractor.

As used in Chapter 13, Article 4 NMSA 1978:

A. "contract" or "construction contract" includes a construction manager at risk contract entered into pursuant to the Educational Facility Construction Manager At Risk Act [13-1-124.1 to 13-1-124.5 NMSA 1978]; and

B. "contractor" includes a construction manager at risk selected pursuant to the Educational Facility Construction Manager At Risk Act.

History: Laws 2007, ch. 141, § 8.

13-4-2. Application of preference.

A. For the purposes of this section:

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

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

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

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

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

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

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

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

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

(1) resident contractor or Native American resident contractor to be eight percent lower than the bid actually submitted; or

(2) resident veteran contractor or Native American resident veteran contractor with annual gross revenues of up to six million dollars ($6,000,000) in the preceding tax year to be ten percent lower than the bid actually submitted.

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

(1) eight percent of the total weight of all the factors used in evaluating the proposals to a resident contractor or Native American resident contractor; or

(2) ten percent of the total weight of all the factors used in evaluating the proposals to a resident veteran contractor or Native American resident veteran contractor that has annual gross revenues of up to six million dollars ($6,000,000) in the preceding tax year.

D. When a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award an additional of the equivalent of:

(1) eight percent of the total possible points to a resident contractor or Native American resident contractor; or

(2) ten percent of the total possible points to a resident veteran contractor or Native American resident veteran contractor that has annual gross revenues of up to six million dollars ($6,000,000) in the preceding tax year.

E. When a joint bid or joint proposal is submitted by a combination of resident veteran, Native American resident veteran, resident, Native American resident or nonresident contractors, the preference provided pursuant to Subsection B, C or D of this section shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each contractor as specified in the joint bid or joint proposal.

F. A person shall not benefit from the provisions of this section based on more than one business concurrently.

G. A public body shall not award a contractor both a resident contractor preference and a resident veteran contractor preference or a Native American resident contractor preference and a Native American resident veteran contractor preference.

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

History: 1978 Comp., § 13-4-2, enacted by Laws 1984, ch. 66, § 2; 1988, ch. 84, § 3; 1989, ch. 310, § 2; 1997, ch. 1, § 3; 1997, ch. 2, § 3; 2001, ch. 174, § 1; 2011 (1st S.S.), ch. 3, § 5; 2012, ch. 56, § 5; 2012, ch. 56, § 6; 2016, ch. 5, § 2; 2022, ch. 6, § 3.

13-4-3. Federal aid projects exempt.

The provisions of Sections 13-4-1 through 13-4-4 NMSA 1978 shall not apply to federal aid construction projects or when the expenditure of federal funds designated for a specific contract is involved.

History: Laws 1933, ch. 50, § 3; 1941 Comp., § 6-503; 1953 Comp., § 6-6-3; 1984, ch. 66, § 3.

13-4-4. [Contracts in violation declared void.]

All contracts executed in violation of this act [13-4-1 to 13-4-4 NMSA 1978] shall be void and of no effect.

History: Laws 1933, ch. 50, § 4; 1941 Comp., § 6-504; 1953 Comp., § 6-6-4.

13-4-5. Use of New Mexico materials.

In all public works within New Mexico, whether constructed or maintained by the state or by a department, board or commission of the state or by any political subdivision of the state, or in any construction or maintenance to which the state or any political subdivision of the state has granted aid, preference shall be given to materials produced, grown, processed or manufactured in New Mexico by citizens or residents of New Mexico. In any case where, in the judgment of the different officers, boards, commissions or other authorities in this state vested with the power of contracting for material used in the construction or maintenance of public works referred to in this section, it appears that an attempt is being made by producers, growers, processors or manufacturers in the state to form a trust or combination of any kind for the purpose of fixing or regulating the price of materials to be used in any public works to the detriment of or loss to the state, the provisions of this section shall not apply.

History: Laws 1933, ch. 19, § 1; 1941 Comp., § 6-505; 1953 Comp., § 6-6-5; Laws 1969, ch. 16, § 1; 1997, ch. 1, § 4; 1997, ch. 2, § 4; 2011 (1st S.S.), ch. 3, § 6.

13-4-6. [Discrimination against New Mexico softwood timber in building codes prohibited.]

It shall be unlawful for any building code or codes of this state or of any county, municipality or township therein, or of any agency, bureau or political division or subdivision of the state government to discriminate in any way against the softwood species of timber, such as Douglas fir and ponderosa pine, grown in New Mexico. All the various grades of lumber produced therefrom, and the softwood species of New Mexico lumber shall be considered, regarded and accepted prima facie as the equal in strength and durability of similar softwood species produced elsewhere, and the burden shall rest upon any person contesting this provision to prove to the contrary in a court of competent jurisdiction by a preponderance of the evidence.

History: Laws 1939, ch. 206, § 2; 1941 Comp., § 6-102; 1953 Comp., § 6-1-1.

13-4-7. [Use of New Mexico timber in public buildings required.]

In the construction, erection or repair of all of its public buildings and structures the state of New Mexico and all counties, municipalities and townships therein, and all agencies, bureaus or political divisions or subdivisions of the state government are

hereby required to use, whenever the species of lumber necessary for such construction or repair work is available in this state, such species of lumber produced from the timber grown in the state of New Mexico; and no person employed to draw specifications therefor shall so word such specifications as to discriminate against any lumber produced from New Mexico as grown timber.

History: Laws 1939, ch. 206, § 3; 1941 Comp., § 6-103; 1953 Comp., § 6-1-2.

13-4-8. Federal aid projects.

The provisions of Section 13-4-7 NMSA 1978 shall not apply to any public works projects in which the United States is interested or which involve participating federal funds.

History: 1953 Comp., § 6-1-2.1, enacted by Laws 1965, ch. 106, § 1.

13-4-9. [Penalty.]

Any person, firm, association or corporation distributing lumber in the state of New Mexico after June 30, 1939, for any of the purposes hereinbefore set forth in this act [13-4-6, 13-4-7, 13-4-9 NMSA 1978] or any contractor in this state using lumber for any of said purposes who shall deliberately violate any of the provisions of this act shall, upon conviction, be subject to a penalty of not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000.00) or imprisonment in the county jail for not less than thirty (30) nor more than ninety (90) days for each violation hereunder; provided, that in the case of a violation by a firm, association or corporation, the jail sentence, if one is imposed, shall be upon the officer, agent or person of such firm, association or corporation responsible for such violation.

History: Laws 1939, ch. 206, § 4; 1941 Comp., § 6-104; 1953 Comp., § 6-1-3.

13-4-10. Short title.

Sections 13-4-10 through 13-4-17 NMSA 1978 may be cited as the "Public Works Minimum Wage Act".

History: 1953 Comp., § 6-6-10.1, enacted by Laws 1963, ch. 304, § 1; 2009, ch. 206, § 1.

13-4-10.1. Definitions.

As used in the Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978]:

A. "director" means the director of the division;

B. "division" means the labor relations division of the workforce solutions department;

C. "fringe benefit" means payments made by a contractor, subcontractor, employer or person acting as a contractor, if the payment has been authorized through a negotiated process or by a collective bargaining agreement, for:

(1) holidays;

(2) time off for sickness or injury;

(3) time off for personal reasons or vacation;

(4) bonuses;

(5) authorized expenses incurred during the course of employment;

(6) health, life and accident or disability insurance;

(7) profit-sharing plans;

(8) contributions made on behalf of an employee to a retirement or other pension plan; and

(9) any other compensation paid to an employee other than wages;

D. "labor organization" means an organization of any kind, or an agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work; and

E. "wage" means the basic hourly rate of pay.

History: 1978 Comp., § 13-4-10.1, as enacted by Laws 2009, ch. 206, § 2.

13-4-11. Prevailing wage and benefit rates determined; minimum wages and fringe benefits on public works; weekly payment; withholding funds.

A. Every contract or project in excess of sixty thousand dollars ($60,000) that the state or any political subdivision thereof is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads of the state and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classifications of laborers and

mechanics, which shall be based upon the wages and benefits that will be determined by the director to be prevailing for the corresponding classifications of laborers and mechanics employed on contract work of a similar nature in the state or locality, and every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Subsection B of this section to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

B. Annually, no later than October 1, the director shall determine prevailing wage rates and prevailing fringe benefit rates to take effect the next January 1 for respective classifications of laborers and mechanics employed on public works projects at the same wage rates and fringe benefit rates used in collective bargaining agreements between labor organizations and their signatory employers that govern predominantly similar classifications of laborers and mechanics for the locality of the public works project and the crafts involved; provided that:

(1) if the prevailing wage rates and prevailing fringe benefit rates cannot reasonably and fairly be determined in a locality because no collective bargaining agreements exist, the director shall determine the prevailing wage rates and prevailing fringe benefit rates for the same or most similar classification of laborer or mechanic in the nearest and most similar neighboring locality in which collective bargaining agreements exist;

(2) the director shall give due regard to information obtained during the director's determination of the prevailing wage rates and the prevailing fringe benefit rates made pursuant to this subsection;

(3) any interested person shall have the right to submit to the director written data, personal opinions and arguments supporting changes to the prevailing wage rate and prevailing fringe benefit rate determination;

(4) prevailing wage rates and prevailing fringe benefit rates determined pursuant to the provisions of this section shall be compiled as official records and kept on file in the director's office, and the records shall be updated in accordance with the applicable rates used in subsequent collective bargaining agreements;

(5) an appeal of the prevailing wage determination pursuant to the provisions of this section shall not have the effect of creating a stay of the implementation of the rate; and

(6) during the pendency of an appeal, whether before the labor and industrial commission or in a court, a court of competent jurisdiction may grant a stay of the implementation of the wage rate based on a motion made by a party or an interested

person, provided the court gives an opportunity for any interested person to be heard on the matter.

C. The prevailing wage rates and prevailing fringe benefit rates to be paid shall be posted by the contractor or person acting as a contractor in a prominent and easily accessible place at the site of the work; provided that there shall be withheld from the contractor, subcontractor, employer or a person acting as a contractor so much of accrued payments as may be considered necessary by the director or contracting officer of the state or political subdivision to pay to laborers and mechanics employed on the project the difference between the prevailing wage rates and prevailing fringe benefit rates required by the director to be paid to laborers and mechanics on the work and the wage rates and fringe benefit rates received by the laborers and mechanics and not refunded to the contractor, subcontractor, employer or a person acting as a contractor or the contractor's, subcontractor's, employer's or person's agents.

D. Certified weekly payroll records of a contracting agency are subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]; provided that the request shall be fulfilled within twenty days of receipt of the written request. Certified weekly payroll records are subject to record retention requirements applicable to payroll records of a state agency.

E. Notwithstanding any other provision of law applicable to public works contracts or agreements, the director may, with cause:

(1) issue investigative or hearing subpoenas for the production of documents or witnesses pertaining to public works prevailing wage projects; and

(2) attach and prohibit the release of any assurance of payment required under Section 13-4-18 NMSA 1978 for a reasonable period of time beyond the time limits specified in that section until the director satisfactorily resolves any probable cause to believe a violation of the Public Works Minimum Wage Act or its implementing rules has taken place.

F. A person may file with the director a complaint that a contractor, subcontractor, employer or person acting as a contractor on the project has failed to pay the person wages or fringe benefits at the rates required by the Public Works Minimum Wage Act. Within thirty days after the filing of the complaint, either party may request in writing a mediation to resolve the complaint.

G. The director shall, within thirty days of the filing of the complaint, commence an investigation of the allegations contained in the complaint. The director shall, within seventy-five days after the completion of mediation or if no mediation is requested, within seventy-five days after the filing of the complaint, make a determination supported by findings of fact and conclusions of law whether there has been an underpayment of wages or fringe benefits or other violation of the Public Works Minimum Wage Act; provided that if the complaint is of a continuing or significantly

complex nature or involves multiple projects or job sites, the director may extend the time in which to make a determination by up to six months by providing written notice and an explanation to all parties of the need to extend the time. Prior to issuing a determination, the director shall provide the contractor, subcontractor, employer or other person against whom the complaint has been filed with an opportunity to respond to the complaint and provide any exculpatory evidence.

H. If the director determines that there has been an underpayment of wages or fringe benefits or a violation of the Public Works Minimum Wage Act, the director shall, in the absence of a voluntary resolution by the parties and within thirty days of making that determination, order the withholding of accrued payments as provided in Subsection C of this section.

I. The director shall issue rules necessary to administer and accomplish the purposes of the Public Works Minimum Wage Act.

History: 1953 Comp., § 6-6-6, enacted by Laws 1965, ch. 35, § 1; 1979, ch. 35, § 1; 1991, ch. 224, § 1; 2005, ch. 253, § 1; 2009, ch. 206, § 3; 2020, ch. 47, § 1; 2022, ch. 5, § 1.

13-4-12. Repealed.

History: 1953 Comp., § 6-6-6.1, enacted by Laws 1965, ch. 35, § 2; 1991, ch. 224, § 2; 2005, ch. 253, § 2; repealed by Laws 2009, ch. 206, § 11.

13-4-13. Failure to pay minimum wage; termination of contract.

Every contract within the scope of the Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978] shall contain further provision that in the event it is determined by the director that any laborer or mechanic employed on the site of the project has been or is being paid a wage rate or fringe benefit rate less than the rates required, and in the absence of a voluntary resolution by the parties, the contracting agency shall, within thirty days of the director's determination, by written notice to the contractor, subcontractor, employer or person acting as a contractor, terminate the right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages or fringe benefits, and the contracting agency shall prosecute the work to completion by contract or otherwise, and the contractor or person acting as a contractor and the contractor's or person's sureties shall be liable to the state for any excess costs occasioned thereby. Any party receiving notice of termination of a project or subcontract pursuant to the provisions of this section may appeal the finding of the director as provided in the Public Works Minimum Wage Act.

History: 1953 Comp., § 6-6-7, enacted by Laws 1965, ch. 35, § 3; 1991, ch. 224, § 3; 2009, ch. 206, § 4; 2020, ch. 47, § 2.

13-4-13.1. Public works contracts; registration of contractors and subcontractors.

A. Except as otherwise provided in this subsection, in order to submit a bid valued at more than sixty thousand dollars ($60,000) in order to respond to a request for proposals or to be considered for award of any portion of a public works project greater than sixty thousand dollars ($60,000) for a public works project that is subject to the Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978], the contractor, serving as a prime contractor or not, shall be registered with the division. Bidding documents issued or released by a state agency or political subdivision of the state shall include a clear notification that each contractor, prime contractor or subcontractor is required to be registered pursuant to this subsection. The provisions of this section do not apply to vocational classes in public schools or public post-secondary educational institutions.

B. The state or any political subdivision of the state shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime contractor that does not provide proof of required registration for itself.

C. Contractors and subcontractors may register with the division on a form provided by the division and in accordance with workforce solutions department rules. The division shall charge a registration fee of four hundred dollars ($400) every two years. The division shall issue to the applicant a certificate of registration within fifteen days after receiving from the applicant the completed registration form and the registration fee.

D. No less than thirty days before the expiration of a registration certificate, the division shall mail or electronically transmit to a registrant's address as reflected in the files of the division a reminder of the approaching expiration date.

E. Registration fees collected by the division shall be deposited in the labor enforcement fund.

History: Laws 2004, ch. 89, § 1; 2005, ch. 98, § 2; 2009, ch. 206, § 5; 2011, ch. 94, § 1.

13-4-14. Payment of wages from funds withheld; list of contractors violating act; additional right of wage earners.

A. The director shall certify to the contracting agency the names of persons or firms the director has found to have failed to pay wages or fringe benefits due employees under the Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978] and the amount of arrears. The contracting agency shall pay or cause to be paid to the affected laborers and mechanics, from any accrued payments withheld under the terms of the contract or designated for the project, three times the amount of any wages or fringe benefits found due to the workers pursuant to the Public Works Minimum Wage Act. The director shall, after notice to the affected persons, distribute a list to all departments

of the state giving the names of persons or firms the director has found to have willfully violated the Public Works Minimum Wage Act. No contract or project shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership or association in which the persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of the persons or firms. A person to be included on the list to be distributed may appeal the finding of the director as provided in the Public Works Minimum Wage Act.

B. If the accrued payments withheld under the terms of the contract, as mentioned in Subsection A of this section, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages or fringe benefits required pursuant to the Public Works Minimum Wage Act, the laborers and mechanics shall have the right of action or intervention or both against the contractor or person acting as a contractor and the contractor's or person's sureties, conferred by law upon the persons furnishing labor and materials, and, in such proceeding, it shall be no defense that the laborers and mechanics accepted or agreed to less than the required rate of wages or voluntarily made refunds. The director shall refer such matters to the district attorney in the appropriate county, and it is the duty and responsibility of the district attorney to bring civil suit for wages and fringe benefits due and other damages provided for in Subsection C of this section.

C. In the event of an aggregate underpayment of wages or fringe benefits greater than five hundred dollars ($500) to an employee subject to the Public Works Minimum Wage Act or implementing rules, the contractor, subcontractor, employer or a person acting as a contractor responsible for the underpayment shall be liable to any affected employee for three times the amount of the employee's unpaid wages or fringe benefits. In addition, the contractor, subcontractor, employer or person acting as a contractor shall be liable to any affected employee for one hundred dollars ($100) for each calendar day on which a contractor, subcontractor, employer or person acting as a contractor has willfully required or permitted the employee to work in violation of the provisions of the Public Works Minimum Wage Act.

D. In an action brought pursuant to Subsection C of this section, the court shall award, in addition to all other remedies, attorney fees and costs incurred on behalf of an employee adversely affected by a violation of the Public Works Minimum Wage Act by a contractor, subcontractor, employer or person acting as a contractor.

History: 1953 Comp., § 6-6-8, enacted by Laws 1965, ch. 35, § 4; 1991, ch. 224, § 4; 2005, ch. 253, § 3; 2009, ch. 206, § 6; 2020, ch. 47, § 3.

13-4-14.1. Labor enforcement fund; creation; use.

The "labor enforcement fund" is created in the state treasury. The fund shall consist of contractor and subcontractor registration fees collected by the division and all investment and interest income from the fund. The fund shall be administered by the division, and money in the fund is appropriated to the division for administration and

enforcement of the Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978]. Money in the fund shall not revert to the general fund at the end of a fiscal year.

History: Laws 2004, ch. 89, § 2; 2009, ch. 206, § 7.

13-4-14.2. Registration cancellation, revocation, suspension; injunctive relief.

The director may:

A. cancel, revoke or suspend with conditions, including probation, the registration of any party required to be registered pursuant to the Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978] for failure to comply with the registration provisions or for good cause, subject to appeal pursuant to Section 13-4-15 NMSA 1978; and

B. seek injunctive relief in district court for failure to comply with the registration provisions of the Public Works Minimum Wage Act.

History: Laws 2004, ch. 89, § 3; 2009, ch. 206, § 8.

13-4-15. Appeals.

A. Any interested person may appeal any determination, finding or action of the director made pursuant to the Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978] to the labor and industrial commission sitting as the appeals board by filing notice of the appeal with the director within fifteen days after the determination has been issued or notice of the finding or action has been given as provided in the Public Works Minimum Wage Act.

B. The labor and industrial commission, sitting as the appeals board, shall adopt rules as it deems necessary for the prompt disposition of appeals. A copy of the rules shall be filed with the librarian of the supreme court law library.

C. The appeals board, within ten days after the filing of the appeal, shall set the matter for an oral hearing within thirty days and, following the hearing, shall enter a decision within ten days after the close of the hearing and promptly mail copies of the decision to the parties.

D. Decisions of the appeals board may be appealed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 6-6-8.1, enacted by Laws 1963, ch. 304, § 5; 1991, ch. 224, § 5; 1998, ch. 55, § 25; 1999, ch. 265, § 25; 2009, ch. 206, § 9.

13-4-16. Construction of act.

Sections 13-4-10 through 13-4-17 NMSA 1978 shall not be construed to supersede or impair a more stringent requirement under any authority granted by federal law to provide for the establishment of specified wage rates.

History: Laws 1937, ch. 179, § 4; 1941 Comp., § 6-509; 1953 Comp., § 6-6-9; 1991, ch. 224, § 6.

13-4-17. Outstanding contracts and invitations.

The Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978] shall not affect a contract existing or a contract that may be entered into pursuant to invitations for bids that are outstanding at the time of enactment of that act.

History: Laws 1937, ch. 179, § 5; 1941 Comp., § 6-510; 1953 Comp., § 6-6-10; 2009, ch. 206, § 10.

13-4-18. Construction contract performance and payment bonds.

A. When a construction contract is awarded in excess of twenty-five thousand dollars ($25,000), the following bonds or security shall be delivered to the state agency or local public body and shall become binding on the parties upon the execution of the contract. If a contractor fails to deliver the required performance and payment bonds, the contractor's bid shall be rejected, its bid security shall be enforced to the extent of actual damages. Award of the contract shall be made pursuant to the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] in the following manner:

(1) a performance bond satisfactory to the state agency or local public body, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract; and

(2) a payment bond satisfactory to the state agency or local public body, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

B. The state purchasing agent or the central purchasing office may reduce the amount of the performance bond required prior to solicitation to not less than fifty percent of the contract price if it is determined to be less costly or more advantageous to the state agency or local public body to self-insure a part of the performance of the contractor.

C. The state purchasing agent or the central purchasing office may reduce the amount of the payment bond required prior to solicitation of not less than fifty percent of the contract price if it is determined that it is in the best interest of the state agency or local public body to do so. Factors to be considered in order to make such a determination include, but are not limited to:

(1) the value and number of subcontracts to be awarded by the contractor; and

(2) the value of the contract.

D. Nothing in this section shall be construed to limit the authority of the state agency or local public body to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection A of this section.

E. For contracts under twenty-five thousand dollars ($25,000) the state agency or local public body may impose in its sole and complete discretion the requirements of Subsections A, B and C of this section.

History: 1978 Comp., § 13-4-18, enacted by Laws 1987, ch. 109, § 1.

13-4-19. Rights of person furnishing labor or materials and right of state with respect to taxes due.

A. The state shall have the right to sue on the payment bond for all taxes due arising out of construction services rendered under a contract, in respect of which a payment bond is furnished under Section 13-4-18 NMSA 1978 by a contractor that does not have its principal place of business in New Mexico, and to prosecute such action to final execution and judgment for the sum due. The court may allow, as part of the costs, interest and reasonable attorney fees.

B. Every person, firm or corporation that has furnished labor or materials in the prosecution of work provided for in a contract, in respect of which a payment bond is furnished under Section 13-4-18 NMSA 1978, and that has not been paid in full for the labor or materials before the expiration of a period of ninety days after the day on which the last of the labor was done or performed or materials were furnished or supplied for which claim is made, shall have the right to sue on the payment bond for the amount of the balance unpaid at the time of the institution of the suit and to prosecute such action to final execution and judgment for the sum or sums justly due for the labor done or performed or materials furnished to be used in the construction of the project; provided, however, that sums justly due shall be determined according to the subcontract or other contractual relationship directly with the contractor furnishing the payment bond. A person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing the payment bond shall have a right of action upon the payment bond upon giving written notice to the contractor, within ninety days from the date on which the person did or performed the

last of the labor or furnished or supplied the last of the materials for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed. Notice shall be served by mailing the notice by registered mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business or at the contractor's residence or in any manner in which the service of summons in civil process is authorized by law.

C. The claimant in the suit shall notify the obligee named in the bond of the beginning of such action, stating the amount claimed, and no judgment shall be entered in the action within thirty days after giving notice. The obligee and any person, firm, corporation or the state having a cause of action on the bond may be admitted on motion as a party to the action, and the court shall determine the rights of all parties thereto. If the amount realized on the bond is insufficient to discharge all claims in full, the amount shall be distributed among the parties entitled thereto pro rata.

D. Except for suits by the state with respect to taxes that shall be brought in the name of the revenue processing division of the taxation and revenue department, every suit instituted under this section shall be brought in the name of the state for the use of the person suing in the district court in any judicial district in which the contract was to be performed and executed or where the claimant resides, but no such suit, including one brought by the revenue processing division, shall be commenced after the expiration of one year after the date of final settlement of the contract. The date of final settlement, for purposes of this section, is that date set by the obligee in the final closing and settlement of payment, if any, due the contractor. The state shall not be liable for the payment of any costs or expenses of any such suit.

E. The obligee named in the bond is authorized and directed to furnish to any person, firm or corporation making application therefor that submits an affidavit that the person, firm or corporation has supplied labor or materials for such work and payment has not been made or that the person, firm or corporation is being sued on any such bond or to furnish to the revenue processing division of the taxation and revenue department a certified copy of the bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution and delivery of the original, and, in case final settlement of the contract has been made, a certified statement of the date of such settlement, which shall be conclusive as to such demand upon it. Applicants shall pay for the certified copies and certified statements such fees as the obligee fixes to cover the cost of preparation.

History: Laws 1923, ch. 136, § 2; C.S. 1929, § 17-202; 1941 Comp., § 6-512; Laws 1953, ch. 65, § 1; 1953 Comp., § 6-6-12; Laws 1975, ch. 251, § 2; 2015, ch. 109, § 1.

13-4-20. Additional bond in case of insolvency of sureties.

Whenever in its judgment any surety on such bond shall be insolvent, or for any cause is not a proper or sufficient surety, the obligee may require the contractor to

furnish a new or additional bond or security within ten days; and thereupon, if the obligee shall so order, all work on said contract shall cease until such new or additional bond or security shall be furnished. If not furnished within said time, the obligee may at its option take over and complete said work as the agent and at the expense of the contractor and sureties, either doing the work on force account or letting the same by contract, and shall be entitled to use any equipment, materials and supplies of the delinquent contractor in completing said work.

History: Laws 1923, ch. 136, § 3; C.S. 1929, § 17-203; 1941 Comp., § 6-513; 1953 Comp., § 6-6-13.

13-4-21. [Public contracts with nonresident persons or partnerships or unadmitted foreign corporations; agent for service of process.]

That all contracts entered into by the state of New Mexico, any political subdivision of the state of New Mexico or any institution or department of the state of New Mexico, with any person or partnership not a resident of the state of New Mexico, or with any foreign corporation not authorized to do business in the state of New Mexico, for the furnishing of any materials or supplies or for the performance of any public work within the state of New Mexico by such nonresident person, partnership or foreign corporation not authorized to do business in the state of New Mexico, shall contain a specific provision designating an agent of such person, partnership or corporation, resident within the state of New Mexico, with his residence and post-office address, upon whom process and writs in any action or proceeding against any such nonresident person, partnership or corporation may be served in any action arising out of such contract to the same effect as though such person, partnership or corporation were actually and personally served within the state of New Mexico.

History: Laws 1937, ch. 144, § 1; 1941 Comp., § 6-515; 1953 Comp., § 6-6-14.

13-4-22. [Secretary of state as agent for service.]

In the event any such contract shall not contain the provision above set forth in Section 1 [13-4-21 NMSA 1978] of this act, or in the event the agent so designated in such contract shall die or remove from the state of New Mexico, then and in such event, the nonresident person, partnership or foreign corporation, as the case may be, by entering into said contract shall be deemed to have named the secretary of the state of New Mexico, and his successor in office, as the true and lawful agent of such person, partnership or corporation upon whom such legal process or writs may be served in any action arising out of such contract, and when service is made upon the secretary of state in the manner hereinafter provided, such service shall have the same force and effect as though personal service had been made upon such person, partnership or corporation within the state of New Mexico.

History: Laws 1937, ch. 144, § 2; 1941 Comp., § 6-516; 1953 Comp., § 6-6-15.

13-4-23. [Service where there is no designated agent.]

The manner of procuring and serving process in any action brought pursuant to the provisions of this act [13-4-21 to 13-4-24 NMSA 1978] when there has been, either, no designation of an agent in any such public contract, or where the agent named in such contract has died or removed from the state so that service cannot be had upon such agent, shall be as follows, to-wit: - the plaintiff, at the time of filing his complaint shall allege and set forth in his complaint or in an affidavit, to the satisfaction of the judge of the court having jurisdiction, that the defendant is one of the persons, partnerships or corporations contemplated in Section 1 [13-4-21 NMSA 1978] of this act, with the residence of said defendant, if known, and the further fact that said defendant has no designated agent within the state. Upon such showing being made, the judge shall make an order directing that service of process be made upon the defendant by delivering two copies of the process and of the complaint and of said order to the secretary of the state of New Mexico, with instructions and directions to the secretary of the state to forward one copy of said summons, complaint or other process, together with a copy of such order of the court to said defendant by registered mail to the address shown in the complaint or affidavit, as the case may be; and that in addition to making service upon the secretary of the state, the order of the court shall also direct that a copy of the process, together with a copy of the complaint and of said order accompanied by a notice that the same has been served upon the secretary of the state, pursuant to this act, be delivered to the defendant without the state. Proof of such service shall be made by affidavit filed in said action, and service shall be deemed complete thirty days from the date such personal service is made on the defendant.

History: Laws 1937, ch. 144, § 3; 1941 Comp., § 6-517; 1953 Comp., § 6-6-16.

13-4-24. [Continuances.]

The court in which any such action is pending shall, upon affidavit submitted upon behalf of the defendant, grant such additional time to answer, or continuances, as shall be reasonably necessary to allow the defendant full opportunity to plead and prepare for the trial of said action.

History: Laws 1937, ch. 144, § 4; 1941 Comp., § 6-518; 1953 Comp., § 6-6-17.

13-4-25, 13-4-26. Repealed.

13-4-27 to 13-4-30. Repealed.

13-4-31. Short title.

Sections 1 through 12 [13-4-31 to 13-4-42 NMSA 1978] of this act may be cited as the "Subcontractors Fair Practices Act".

History: Laws 1988, ch. 18, § 1.

13-4-32. Legislative findings.

The legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration and repair of public works projects often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among contractors and subcontractors and lead to insolvencies and loss of wages to employees.

History: Laws 1988, ch. 18, § 2.

13-4-33. Definitions.

As used in the Subcontractors Fair Practices Act [13-4-31 to 13-4-42 NMSA 1978]:

A. "contractor" means the prime contractor on a public works construction project who contracts directly with the using agency;

B. "subcontractor" means a contractor who contracts directly with the contractor;

C. "listing threshold" means the dollar amount, stipulated in the bidding documents, above which subcontractors must be listed;

D. "notice" means information, advice or a written warning intended to apprise a contractor, subcontractor or using agency of some proceeding in which the contractor's, subcontractor's or using agency's interests are involved or to inform him of some fact that is his right to know. Notice may be sent to a contractor, subcontractor or using agency by certified or registered mail and shall be deemed to be completed upon date of mailing; and

E. "using agency" means any state agency or local public body requiring services or construction.

History: Laws 1988, ch. 18, § 3; 1995, ch. 82, § 2.

13-4-34. Listing of subcontractors; requirements.

A. Any using agency taking bids for any public works construction project shall provide in the bidding documents prepared for that project a listing threshold which shall be five thousand dollars ($5,000) or one-half of one percent of the architect's or engineer's estimate of the total project cost, not including alternates, whichever is greater. If the bidding documents do not include a listing threshold, then the using agency shall supply the listing threshold. If the listing threshold has not been included, the bid opening shall be postponed until the using agency has complied with this section. Any contractor or subcontractor interested in bidding may apply to the district

court in the county in which the project will be located for an injunction preventing the bid opening until the using agency has complied with this section. Any person submitting a bid shall in his bid set forth:

(1) the name and the city or county of the place of business of each subcontractor under subcontract to the contractor who will perform work or labor or render service to the contractor in or about the construction of the public works construction project in an amount in excess of the listing threshold; and

(2) the category of the work that will be done by each subcontractor. The contractor shall list only one subcontractor for each category as defined by the contractor in his bid.

B. A bid submitted by a contractor who fails to comply with the provisions of Subsection A of this section is a nonresponsive bid which shall not be accepted by a using agency.

History: Laws 1988, ch. 18, § 4; 1989, ch. 296, § 1; 1995, ch. 82, § 3.

13-4-35. Exemption.

With the exclusion of that portion of work covering street lighting and traffic signals, the Subcontractors Fair Practices Act [13-4-31 to 13-4-42 NMSA 1978] shall not apply to contracts for the construction, improvement or repair of streets or highways, including bridges, underground utilities within easements including but not limited to water lines, sewer lines and storm sewer lines.

History: Laws 1988, ch. 18, § 5.

13-4-35.1. Application of act.

The Subcontractors Fair Practices Act [13-4-31 to 13-4-42 NMSA 1978] shall not apply to any transaction occurring after the contractor and the listed subcontractor have executed a subcontract unless subsequent action on the subcontract relates to subcontractor listing requirements.

History: Laws 1995, ch. 82, § 1.

13-4-36. Substitution of subcontractor.

A. No contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except that the using agency shall consent to the substitution of another person as a subcontractor in the following circumstances:

(1) when the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project involved and the terms of such subcontractor's written bid, is presented to him by the contractor;

(2) when the subcontractor listed in the original bid becomes bankrupt or insolvent prior to execution of a subcontract;

(3) when the using agency refuses to approve the subcontractor listed in the original bid, provided such approval has been reserved in the bidding documents;

(4) when the subcontractor listed in the original bid fails or refuses to perform his subcontract;

(5) when the contractor demonstrates to the using agency or its duly authorized officer that the name of the subcontractor was listed as the result of an inadvertent clerical error;

(6) when a bid alternate accepted by the using agency causes the listed subcontractor's bid not to be low;

(7) when the contractor can substantiate to the using agency that a listed subcontractor's bid is incomplete;

(8) when the listed subcontractor fails or refuses to meet the bond requirements of the contractor;

(9) when it is determined that the listed subcontractor does not have a proper license to perform the work and the contractor has submitted the name of the subcontractor along with proof that the subcontractor bid work for which he was not licensed by the construction industries division of the regulation and licensing department; or

(10) when it is determined by the using agency, the prime contractor or the director of the labor and industrial division of the labor department that a listed subcontractor is not a registered subcontractor on the date bids are unconditionally accepted for consideration.

B. Prior to approval of the contractor's request for substitution of a subcontractor, the using agency shall give notice in writing to the listed subcontractor of the contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the using agency. Failure to file written objections shall constitute the listed subcontractor's consent to the substitution. If written

objections are filed, the using agency shall give at least five working days notice in writing to the listed subcontractor of a hearing by the using agency on the contractor's request for substitution.

C. No contractor whose bid is accepted shall permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid without the consent of the using agency.

D. No contractor whose bid is accepted, other than in the performance of change orders causing changes or deviations from the original contract, shall sublet or subcontract any portion of the work in excess of the listing threshold as to which his original bid did not designate a subcontractor unless:

(1) the contractor fails to receive a bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall designate on the listing form that no bid was received; or

(2) the contractor fails to receive more than one bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall state on the listing form that only one subcontractor's bid was received, together with the name of the subcontractor. This designation shall not occur more than one time on the subcontractor list.

History: Laws 1988, ch. 18, § 6; 1995, ch. 82, § 4; 2005, ch. 98, § 3.

13-4-37. Bond requirements.

A. It is the responsibility of each subcontractor submitting a bid to a contractor to be prepared to submit a faithful performance and payment bond if so requested by the contractor.

B. In the event any subcontractor submitting a bid to a contractor does not, upon the request of the contractor and at the expense of the contractor at the established charge or premium therefor, furnish to the contractor a bond issued by a corporate surety authorized to do business in New Mexico in accordance with the New Mexico Insurance Code [Chapter 59A NMSA 1978] and listed in the United States treasury department circular 570 wherein the contractor is named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the contractor may reject the bid and make a substitution of another subcontractor subject to the provisions of Section 13-4-36 NMSA 1978. Such bond may be required at the expense of the subcontractor only if the contractor in his written or published request for subcontract bids:

(1) specifies that the expense for the bond shall be borne by the subcontractor; and

(2) clearly specifies the amount and requirements of the bond.

History: Laws 1988, ch. 18, § 7; 1995, ch. 82, § 5.

13-4-38. Failure to specify subcontractor.

If a contractor fails to list a subcontractor in excess of the listing threshold and he does not state that no bid was received or that only one bid was received, he represents that he is fully qualified to perform that portion of the work himself and that he shall perform that portion of the work himself. If after the award of the contract the contractor subcontracts any portion of the work, except as provided in the Subcontractors Fair Practices Act [13-4-31 to 13-4-42 NMSA 1978], the contractor shall be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided in Section 13-4-41 NMSA 1978.

History: Laws 1988, ch. 18, § 8; 1995, ch. 82, § 6.

13-4-39. Inadvertent clerical error.

A. The contractor, as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor, shall, within four working days after the time of the prime bid opening by the using agency, give written notice to the using agency and to both the subcontractor he claims to have listed in error and the subcontractor who had bid to the contractor prior to bid opening.

B. Any listed subcontractor who has been notified by the contractor in accordance with the provisions of this section as to an inadvertent clerical error shall be allowed twelve working days from the time of the prime bid opening within which to submit to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file written notice within the twelve working days shall be primary evidence of his agreement that an inadvertent clerical error was made.

C. The using agency shall, in the absence of an objection to the contrary by the listed subcontractor in the original bid, consent to the substitution of the intended subcontractor if:

(1) the contractor, the listed subcontractor listed in error and the intended subcontractor each submit an affidavit to the using agency, along with such additional evidence as the parties may wish to submit, that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within twelve working days from the time of the prime bid opening; or

(2) affidavits are filed by both the contractor and the intended subcontractor within the specified time but the subcontractor whom the contractor claims to have listed in error does not submit, within twelve working days from the time of prime bid opening,

to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error as provided in this section.

D. If affidavits are filed by both the contractor and the intended subcontractor but the listed subcontractor has, within twelve working days from the time of the prime bid opening, submitted to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error, the using agency shall investigate the claims of the parties and hold a hearing to determine the validity of the claims, within thirty days after the receipt of the contractor's written objection. Any determination made shall be based on facts contained in the affidavits submitted by all three parties and supported by testimony under oath and subject to cross-examination. The using agency may, on its motion or that of any other party, admit testimony of other contractors, any bid registries or depositories or any other party in possession of facts that may have a bearing on the decision of the using agency.

History: Laws 1988, ch. 18, § 9; 1995, ch. 82, § 7.

13-4-40. Emergency subcontracting.

Subcontracting any portion of the work in excess of the listing threshold as to which no subcontractor was designated in the original bid shall be permitted only in the case of public emergency or necessity and then only upon a written finding by the using agency setting forth the facts constituting the emergency or necessity.

History: Laws 1988, ch. 18, § 10.

13-4-41. Penalties.

A. When a contractor violates any provision of the Subcontractors Fair Practices Act [13-4-31 to 13-4-42 NMSA 1978] except Section 13-4-34 NMSA 1978, the using agency shall:

(1) in the case of a contractor who substitutes another subcontractor in violation of Section 13-4-36 NMSA 1978, for the subcontractor originally included in the bid, assess the contractor a penalty in an amount equal to the greater of ten percent of the amount bid by the listed subcontractor or the difference between the amount bid by the listed subcontractor and the amount bid by the substituted subcontractor;

(2) in the case of a contractor substituting a listed subcontractor for another subcontractor, and the substituted subcontractor knowingly participated in a violation of Section 13-4-36 NMSA 1978, assess the substituted subcontractor a penalty in an amount equal to the greater of ten percent of the amount bid by the listed subcontractor and the difference between the amount bid by the listed subcontractor and the substituted subcontractor; or

(3) in the case of a contractor who fails to list a subcontractor in excess of the listing threshold as defined in Section 13-4-38 NMSA 1978, assess the contractor a penalty of eight percent of the amount of the subcontract issued for the first violation and thirty percent of the amount of the subcontract issued for any violation thereafter, on any one project.

B. Penalties assessed pursuant to the provisions of this section shall be deposited into the fund from which the contract was awarded.

C. In a proceeding under this section, the contractor shall be entitled to a hearing after notice.

D. A violation of the provisions of the Subcontractors Fair Practices Act constitutes grounds for disciplinary action against a contractor or a subcontractor, pursuant to regulations of the construction industries division of the regulation and licensing department.

E. A contractor or a subcontractor who attempts to circumvent the provisions of the Subcontractors Fair Practices Act shall be subject to the penalties established pursuant to this section.

F. Any listed subcontractor removed in violation of the Subcontractors Fair Practices Act may bring an action in the district court for damages, injunctive or other relief.

History: Laws 1988, ch. 18, § 11; 1989, ch. 296, § 2; 1995, ch. 82, § 8.

13-4-42. Coverage of home rule municipalities.

Any home rule municipality or H class county chartered under the provisions of Article 10, Section 6 of the constitution of New Mexico is expressly denied authority to legislate regulation of the subject matter covered in the Subcontractors Fair Practices Act [13-4-31 to 13-4-42 NMSA 1978] that conflicts with the provisions of that act.

History: Laws 1988, ch. 18, § 12.

13-4-43. Dispute resolution.

Once the using agency has determined the existence of a valid claim under the provisions of the Subcontractors Fair Practices Act [13-4-31 to 13-4-42 NMSA 1978], the using agency or agent of the using agency may:

A. hold a public hearing for the purpose of providing an informal resolution of the dispute by preparing a "form of dispute" which shall be available to all parties. The form shall state concisely, in numbered paragraphs, the matter at issue or dispute which the complainant expects to be determined. The agent or the using agency shall evaluate

the issues presented by both sides of the dispute and render a decision within ten days after the hearing, and provide the parties with a written copy of the decision by certified mail, return receipt requested; or

B. refer the matter in dispute to be resolved through arbitration.

History: Laws 1988, ch. 18, § 13.

ARTICLE 4A
Art in Public Places

13-4A-1. Short title.

This act [13-4A-1 to 13-4A-11 NMSA 1978] may be cited as the "Art in Public Places Act".

History: Laws 1986, ch. 11, § 1.

13-4A-2. Legislative declaration.

The legislature declares it to be a policy of the state that a portion of appropriations for capital expenditures be set aside for the acquisition or commissioning of works of art to be used in, upon or around public buildings.

History: Laws 1986, ch. 11, § 2.

13-4A-3. Definitions.

As used in the Art in Public Places Act:

A. "agency" means all state departments and agencies, boards, councils, institutions, commissions and quasi-public corporations, including all state educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico, and all statutorily created post-secondary educational institutions;

B. "architect" means the person or firm designing the project for the contracting agency to which the one percent provision pursuant to Section 13-4A-4 NMSA 1978 applies;

C. "contracting agency" means the agency having the control, management and power to enter into contracts for new construction or renovation of any public building;

D. "division" means the arts division of the cultural affairs department;

E. "public buildings" means those buildings under the control and management of the facilities management division of the general services department, the department of game and fish, the energy, minerals and natural resources department, the department of transportation, the state fair commission, the supreme court, the commissioner of public lands, the cultural affairs department, the governing boards of the state educational institutions and statutorily created post-secondary educational institutions, the public education department and the legislature or all buildings constructed with funds appropriated by the legislature. For the purposes of the Art in Public Places Act, "public buildings" does not include such auxiliary buildings as maintenance plants, correctional facilities, warehouses or temporary structures; and

F. "work of art" means any work of visual art, including but not limited to a drawing, painting, mural, fresco, sculpture, mosaic or photograph; a work of calligraphy; a work of graphic art, including an etching, lithograph, offset print, silk screen or a work of graphic art of like nature; works in clay, textile, fiber, wood, metal, plastic, glass and like materials; or mixed media, including a collage or assemblage or any combination of the foregoing art media that is chosen to be included in or immediately adjoining the public building under consideration. Under special circumstances, the term may include environmental landscaping if approved by the division.

History: Laws 1986, ch. 11, § 3; 1989, ch. 178, § 1; 2013, ch. 115, § 11.

13-4A-4. Allocation of construction costs.

A. All agencies shall allocate as a nondeductible item an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000), to be expended for the acquisition and installation of works of art for the new building to be constructed or the building in which the major renovation is to occur.

B. An amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, allocated from appropriations for new construction or major renovations of excluded structures pursuant to Subsection E of Section 3 [13-4A-3 NMSA 1978] of the Art in Public Places Act shall be accounted for separately and expended for acquisition and installation of art for existing public buildings. The division shall determine the amount, not to exceed fifty thousand dollars ($50,000), to be made available for the purchase of art in existing buildings in consultation with the contracting agency. The selection process for art for existing buildings shall follow guidelines established by the division pursuant to the Art in Public Places Act.

History: Laws 1986, ch. 11, § 4.

13-4A-5. Art in public places fund; creation.

There is created in the state treasury the "art in public places fund" which shall be administered by the division pursuant to the Art in Public Places Act.

History: Laws 1986, ch. 11, § 5; 1989, ch. 324, § 5.

13-4A-6. Works of art.

The works of art acquired pursuant to the Art in Public Places Act may be an integral part of the building, attached to the building, detached within or outside the structure or placed on public lands, part of a temporary exhibition or loaned or exhibited by the agency in other public facilities.

History: Laws 1986, ch. 11, § 6.

13-4A-7. Administration of the program.

The division shall determine the amount to be made available for the purchase of art, in consultation with the contracting agency responsible for the building to be constructed or renovated, and payments thereof shall be made in accordance with law. All agencies shall notify the division in writing upon legislative approval of construction budgets. One percent of the total appropriation for new construction or renovation of any building shall be deposited into the art in public places fund after the issuance of the appropriate bonds. If the entire one percent of the total funds appropriated for a particular building is not required for the project, the remainder shall accumulate in the art in public places fund and shall be accounted for separately and expended for the acquisition of art for existing buildings, as determined by the division. Any money remaining in the fund at the end of each fiscal year shall not revert but shall remain in the art in public places fund to be used to implement the purposes of the Art in Public Places Act.

History: Laws 1986, ch. 11, § 7.

13-4A-8. Artist selection.

The division shall establish guidelines for the art selection process. This process shall provide for participation from representatives of the contracting agency, the user agency, the division, the project architect, visual artists or design professionals and interested members of the community.

History: Laws 1986, ch. 11, § 8.

13-4A-9. Separate contracts.

Expenditures for works of art as provided in Section 7 [13-4A-7 NMSA 1978] of the Art in Public Places Act shall be contracted for separately from all other items in the new construction of the public building.

History: Laws 1986, ch. 11, § 9.

13-4A-10. Division; rules and regulations.

The selection, execution, placement and acceptance of works of art for a construction project shall be the responsibility of the division in consultation with the contracting agency. The division shall adopt rules and regulations to govern the selection, execution, placement and acceptance of the works of art to be acquired in accordance with this section and other rules, regulations and procedures necessary to implement the Art in Public Places Act. Administrative costs incurred by the division for the implementation of the Art in Public Places Act may be charged against the art in public places fund, provided that such costs have been properly budgeted and the budget has been approved by the state cultural affairs officer and the secretary of finance and administration.

History: Laws 1986, ch. 11, § 10.

13-4A-11. Maintenance.

The contracting agency or its designee is responsible for inventory, maintenance, repair and security of art work. Any maintenance or repair work shall be done in consultation with the division.

History: Laws 1986, ch. 11, § 11.

ARTICLE 4B
Fine Art in Public Buildings

13-4B-1. Findings.

The legislature finds that the physical alteration or destruction of fine art, which is an expression of the personality of the artist, is detrimental to the reputation of the artist and artists therefore have an interest in protecting their works of fine art against such alteration or destruction. The legislature also finds that there is a public interest in preserving the integrity of cultural and artistic creations.

History: Laws 1987, ch. 70, § 1.

13-4B-2. Definitions.

As used in this act [13-4B-1 to 13-4B-3 NMSA 1978]:

A. "artist" means the natural person who actually creates a work of fine art but does not include art created by an employee within the scope of his employment. In case of a joint creation of a work of art, each joint creator shall have the rights of an artist with respect to the work of fine art as a whole;

B. "fine art" means any original work of visual or graphic art of any media including any painting, print, drawing, sculpture, craft, object, photograph, audio or video tape, film, hologram or any combination of such media of recognized quality;

C. "gross negligence" means the exercise of so slight a degree of care as to justify the belief that there was indifference to the particular work of fine art;

D. "public building" means a building owned by the state or any of its branches, agencies, departments, boards, instrumentalities or institutions or a building owned by any political subdivision of the state or any of its agencies, instrumentalities or institutions; and

E. "public view" means on the exterior of a public building or in an interior area of a public building.

History: Laws 1987, ch. 70, § 2.

13-4B-3. Fine art; alteration or destruction prohibited; injunctive relief; damages; exceptions.

A. No person except an artist who owns or possesses a work of fine art which the artist has created shall intentionally commit or authorize the intentional commission of any physical defacement, mutilation, alteration or destruction of a work of fine art in public view. As used in this section, "intentional physical defacement, mutilation, alteration or destruction" includes any such action taken deliberately or through gross negligence.

B. The artist shall retain the right to claim and receive credit under his own name or under a reasonable pseudonym or, for just and valid reason, to disclaim authorship of his work of fine art. Credit shall be determined in accord with the medium of expression and the nature and extent of the contribution of the artist to the work of fine art.

C. The artist or any bona fide union or other artists' organization authorized in writing by the artist for such purpose may commence an action in district court without having as prerequisites to a suit any need for:

(1) damages already incurred;

(2) a showing of special damages, if any; or

(3) general damages in any monetary amount to recover or obtain any of the following:

(a) injunctive relief or declaratory relief;

(b) actual damages;

(c) reasonable attorneys' and expert witness fees and all other costs of the action; or

(d) any other relief which the court deems proper.

D. In determining whether a work of fine art is of recognized quality, the court shall rely on the opinions of artists, art dealers, collectors of fine art, curators of art museums, restorers and conservators of fine art and other persons involved with the creation or marketing of fine art.

E. The provisions of this section shall, with respect to the artist, or if any artist is deceased, his heir, legatee, or personal representative, continue until the fiftieth anniversary of the death of such artist, and continue in addition to any other rights and duties which may now or in the future be applicable and, except as provided in Subsection F of this section, may not be waived except by an instrument in writing expressly so providing which is signed by the artist and refers to specific works with identification and such waiver shall only apply to work so identified.

The attorney general may, if the artist is deceased, assert the rights of the artist on the artist's behalf and commence an action for injunctive relief with respect to any work of art which is in public view.

F. If a work of fine art in public view cannot be removed from a building without substantial physical defacement, mutilation, alteration, or destruction of such work, the rights and duties created under this section, unless expressly reserved by an instrument in writing signed by the owner of such building and properly recorded prior to the installation of such art, shall be deemed waived. Such instrument, if recorded, shall be binding on subsequent owners of such building.

G. If the owner of a building wishes to remove a work of fine art which is a part of that building but which can be removed from the building without substantial harm to such fine art, the rights and duties created under this section shall apply unless the owner has diligently attempted without success to notify the artist or, if the artist is deceased, his heir, legatee or personal representative in writing of his intended action affecting the work of fine art, or unless he did provide notice and that person failed within ninety days either to remove the work or to pay for its removal. If such work is removed at the expense of the artist, his heir, legatee or personal representative, title to the fine art shall be deemed to be in such person.

History: Laws 1987, ch. 70, § 3.

ARTICLE 4C
Public Works Mediation

13-4C-1. Short title.

Chapter 13, Article 4C NMSA 1978 may be cited as the "Public Works Mediation Act".

History: 1978 Comp., § 13-4C-1, enacted by Laws 1992, ch. 63, § 1.

13-4C-2. Definitions.

As used in the Public Works Mediation Act:

A. "interested person" means a person with an association to a dispute related to the performance of a public works project, when that association arises out of the same transaction or occurrence underlying the dispute;

B. "mediator" means an individual or organization, independent of a dispute related to the performance of a public works project, that acts to assist persons in the resolution of the dispute;

C. "person" means the state, political subdivision of the state, including any home rule municipality chartered pursuant to the provisions of Article 10, Section 6 of the constitution of New Mexico, institution or department of the state, local public body, contractor, subcontractor, supplier, architect, engineer, surety or project manager; and

D. "public works project" means a project of the state, including highway projects of the state highway and transportation department, a project of a political subdivision of the state, including any home rule municipality chartered pursuant to the provisions of Article 10, Section 6 of the constitution of New Mexico, a project of an institution or department of the state or a project of a local public body to construct, repair, alter, demolish, install or extend an improvement on real property or to improve real property owned, used or leased by the state, political subdivision of the state, an institution or department of the state or a local public body.

History: 1978 Comp., § 13-4C-2, enacted by Laws 1992, ch. 63, § 2.

13-4C-3. Application.

The Public Works Mediation Act applies to all disputes related to the performance of a public works project.

History: 1978 Comp., § 13-4C-3, enacted by Laws 1992, ch. 63, § 3.

13-4C-4. Mediation requirement; exemptions.

A. Except as provided in Subsections B, C and D of this section, a person who seeks to resolve a dispute related to the performance of a public works project shall exhaust the mediation procedures set forth in the Public Works Mediation Act before seeking judicial relief in a court of law.

B. A dispute that arises under an arbitration clause of a contract for a public works project that includes a clause in the contract that requires arbitration is exempt from the provisions of the Public Works Mediation Act.

C. The provisions of the Public Works Mediation Act shall not apply to:

(1) any disputes between employers and employees, including disputes arising pursuant to the provisions of the Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978] or the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978]; or

(2) any disputes regarding an apprenticeship, including disputes arising pursuant to the provisions of Sections 50-7-1 through 50-7-7 NMSA 1978.

D. All contractual alternative dispute resolution remedies shall be exhausted prior to application of the provisions of the Public Works Mediation Act.

History: 1978 Comp., § 13-4C-4, enacted by Laws 1992, ch. 63, § 4.

13-4C-5. Notice of mediation session; service of notice.

A. An interested person may convene a mediation session for the purpose of resolving disputes related to the performance of a public works project. Mediation of a dispute related to the performance of a public works project shall take place within thirty days after an interested person has provided notice of the mediation session to other interested persons.

B. When an interested person receives notice of a mediation session, that person may notify other interested persons of the mediation session. A person who receives notice of a mediation session shall provide notice:

(1) to other interested persons no later than five days following receipt of the original notice; and

(2) that other interested persons have been notified to the interested person who convened the mediation session no later than five days following receipt of the original notice.

C. An interested person providing notice of a mediation session shall include the following information within the notice:

(1) the name and mailing address of the mediator;

(2) the date, time and location of the mediation session;

(3) a brief summary of all issues concerning a dispute related to the performance of a public works project;

(4) a brief statement regarding an interested person's association to a dispute related to the performance of a public works project, when the interested person has been provided with notice of a mediation session; and

(5) the cost for an eight-hour mediation session and the responsibility for payment of the costs pursuant to the provisions of Section 13-4C-11 NMSA 1978.

D. Service of the notice required pursuant to the provisions of Subsection B of this section shall be made by:

(1) mailing a certified letter, return receipt requested, to an interested person's residence, principal office or place of business; or

(2) delivering a copy of the notice to interested persons.

History: 1978 Comp., § 13-4C-5, enacted by Laws 1992, ch. 63, § 5.

13-4C-6. Location of mediation session.

The mediation session shall be conducted at a neutral site that affords no advantage to any person attending the mediation session. The mediation session shall be held in the county where the public works project is located unless otherwise agreed to by all persons attending the session. In no event shall the mediation session be held at the residence, office or place of business of any person attending the mediation session unless otherwise agreed to by all persons attending the session. A mediator has final authority regarding the location of a mediation session if the persons attending a session are unable to agree on a location.

History: 1978 Comp., § 13-4C-6, enacted by Laws 1992, ch. 63, § 6.

13-4C-7. Written materials.

Each interested person properly notified of a mediation session shall prepare a summary of his position relative to issues concerning a dispute related to the performance of a public works project. The summary shall not exceed four pages in length. The summary shall be provided to the mediator at least four days prior to the

mediation session. A mediator may request additional information or materials from persons properly notified of the mediation session.

History: 1978 Comp., § 13-4C-7, enacted by Laws 1992, ch. 63, § 7.

13-4C-8. Attendance.

All interested persons or representatives of interested persons properly notified of a mediation session shall attend the session for a minimum of eight hours unless otherwise agreed to by all persons attending the session. An interested person or a representative of an interested person attending a mediation session shall have the authority to enter into a settlement of disputes related to the performance of a public works project. A person may be accompanied by an attorney during the mediation session.

History: 1978 Comp., § 13-4C-8, enacted by Laws 1992, ch. 63, § 8.

13-4C-9. Recording of agreements; compromise and offers to compromise.

A. Following the completion of a mediation session, the mediator shall record any agreements entered into by persons during the session. Agreements shall be recorded in writing or by an audio or video tape recording; provided that all persons entering into the agreement shall indicate their assent to the agreement.

B. Evidence of offers to compromise a dispute or disclosures made during a mediation session shall not be admissible in subsequent judicial proceedings.

History: 1978 Comp., § 13-4C-9, enacted by Laws 1992, ch. 63, § 9.

13-4C-10. Mediation clause in a contract; application of federal law.

A. When persons include a mediation clause in a contract for performance of a public works project, the provisions of the mediation clause shall not conflict with the provisions of the Public Works Mediation Act. Any language in a mediation clause that conflicts with the provisions of the Public Works Mediation Act shall be unenforceable at law.

B. When a public works project involves the expenditure of federal funds, the mediation process shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Public Works Mediation Act, compliance with federal law or regulations shall constitute compliance with the Public Works Mediation Act.

History: 1978 Comp., § 13-4C-10, enacted by Laws 1992, ch. 63, § 10.

13-4C-11. Costs.

A. The costs of a mediation session shall be borne equally by all interested persons properly notified of a mediation session. When an interested person who has been properly notified of a mediation session fails to appear for that session or fails to remain for the duration of a session, that interested person shall be wholly responsible for the costs of the mediation session.

B. When a person files a lawsuit subsequent to exhausting the procedures set forth in the Public Works Mediation Act, the court may assess costs against any interested person who was properly notified of a mediation session and who failed to pay his share of the costs of the mediation session.

C. The mediator shall determine whether a person is an interested person for the purpose of sharing the costs of a mediation session.

History: 1978 Comp., § 13-4C-11, enacted by Laws 1992, ch. 63, § 11.

ARTICLE 4D
Public Works Apprenticeship and Training

13-4D-1. Short title.

Chapter 13, Article 4D NMSA 1978 may be cited as the "Public Works Apprentice and Training Act".

History: Laws 1992, ch. 74, § 1; 2007, ch. 200, § 15.

13-4D-2. Purpose.

The purpose of the Public Works Apprentice and Training Act is to ensure funding, through contributions made by employers, to establish an apprenticeship program that will develop skilled building trades craftsmen in occupations recognized by the bureau of apprenticeship and training of the United States department of labor or the New Mexico apprenticeship council. The funding will ensure adequate training during economic downturns, increase the number of New Mexicans possessing skills that will enhance their opportunities for employment and maintain the high standards of craftsmanship in our state.

History: Laws 1992, ch. 74, § 2.

13-4D-3. Definitions.

As used in the Public Works Apprentice and Training Act:

A. "approved apprentice and training programs" means building trades apprenticeship and training programs in New Mexico that are recognized by the office of apprenticeship of the employment and training administration of the United States department of labor or the New Mexico apprenticeship council;

B. "compliance statement" means a monthly record of an employer's contributions paid into an approved apprentice and training program in New Mexico or into the public works apprentice and training fund; and

C. "employer" means a contractor, subcontractor or any person acting as a contractor on a public works project, as that term is defined in the provisions of the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978].

History: Laws 1992, ch. 74, § 3; 2007, ch. 200, § 16; 2024, ch. 5, § 2.

13-4D-4. Administration.

A. The Public Works Apprentice and Training Act shall be administered by the workforce solutions department. The department shall collect employers' contributions in accordance with that act, review employers' compliance statements, review certified payroll reports to verify training contributions, investigate allegations of and impose penalties for employer noncompliance and disburse funds as provided in Section 13-4D-5 NMSA 1978.

B. Public works construction projects, except for street, highway, bridge, road, utility or maintenance contracts with employers who elect not to participate in training, shall not be constructed unless an employer agrees to make contributions to approved apprentice and training programs in New Mexico in which the employer is a participant or to the public works apprentice and training fund administered by the workforce solutions department. Contributions shall be made in the same manner and in the same amount as apprentice and training contributions required pursuant to wage rate determinations made by the department.

C. The workforce solutions department shall adopt rules and regulations necessary to implement the provisions of the Public Works Apprentice and Training Act.

History: Laws 1992, ch. 74, § 4; 2024, ch. 5, § 3.

13-4D-5. Fund created; disbursement of funds.

There is created the "public works apprentice and training fund" in the workforce solutions department. Money in the fund shall be distributed in the following manner:

A. no more than fifteen percent of the funds may be used by the workforce solutions department to hire staff to administer the funds collected by the department; and

B. the remainder of the funds shall be used for approved apprentice and training programs in New Mexico. The workforce solutions department shall develop an annual budget and, subject to appropriation by the legislature in the general appropriation act, shall disburse funds to approved apprentice and training programs in New Mexico, taking into account participant contact hours of classroom instruction and on-the-job training for the preceding year, to be not less than ninety percent of one hundred forty-four contact hours of classroom instruction per participant per school year and not less than one thousand hours of on-the-job training per twelve-month period; provided that funds shall not be distributed to programs not in compliance with their approved standards. Notwithstanding any language in the general appropriation act that otherwise limits budget adjustments, if the fund balance available for disbursement to approved programs exceeds the amount appropriated, pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, the workforce solutions department may request budget increases up to the excess fund balance for distribution to the programs.

History: Laws 1992, ch. 74, § 5; 2005, ch. 95, § 1; 2024, ch. 5, § 4.

13-4D-6. Notice to employers; publication of programs.

A. An employer's contribution requirement under the provisions of the Public Works Apprentice and Training Act shall be included with all minimum wage determinations issued by the workforce solutions department on all public works construction projects. The department shall provide the contribution rate for approved apprentice and training programs, and that information shall be part of the public works construction projects.

B. The workforce solutions department shall publish a list of approved apprentice and training programs in New Mexico.

History: Laws 1992, ch. 74, § 6; 2024, ch. 5, § 5.

13-4D-7. Noncompliance; penalties.

An employer who willfully and knowingly fails to comply with the requirements of the Public Works Apprentice and Training Act shall be subject to the following penalties:

A. a noncomplying employer shall pay a civil penalty of ten dollars ($10.00) for every calendar day of noncompliance, and the penalty shall be imposed and collected for deposit into the public works apprentice and training fund by the public works bureau of the labor and industrial division of the labor department;

B. a noncomplying employer shall have the unpaid contributions, as required under the provisions of the Public Works Apprentice and Training Act, withheld as provided in Subsections A and B of Section 13-4-14 NMSA 1978; and

C. a noncomplying employer shall not be permitted to bid on any public works contracts as provided in Subsections A and B of Section 13-4-14 NMSA 1978.

History: Laws 1992, ch. 74, § 7.

13-4D-8. Appeals.

An alleged noncomplying employer may appeal any of the penalties imposed upon him under the provisions of Section 7 of the Public Works Apprentice and Training Act by seeking an appeal as provided under the provisions of Section 13-4-15 NMSA 1978.

History: Laws 1992, ch. 74, § 8.

ARTICLE 5
Insurance on Public Buildings

13-5-1. State agency public property; insurance; reserves for losses of state agencies; public property reserve fund created.

A. The risk management division of the general services department shall purchase a blanket insurance policy for public buildings of state agencies against loss or damage by fire, windstorm, hail, smoke, explosion, riot or civil commotion. The risk management division may provide coverage to covered educational entities under the public property reserve fund through blanket or individual policies. The risk management division shall create a reserve for the uninsured value of any such public building and for the uninsured loss or damage to any such building by flood, subject to any deductible that the risk management advisory board determines shall be borne by individual state agencies or covered educational entities.

B. Subject to any deductible to be borne by individual state agencies or covered educational entities, the risk management division of the general services department may purchase insurance, establish reserves or provide a combination of insurance and reserves to cover, in any amount not to exceed replacement cost:

(1) buildings of state agencies or covered educational entities destroyed or damaged by any peril other than a peril set forth in Subsection A of this section;

(2) personal property that is destroyed or damaged by any peril; or

(3) personal property that is stolen.

C. Any insurance purchased pursuant to Subsections A and B of this section may be purchased with such deductible provisions as may be deemed desirable by the risk management advisory board.

D. The director of the risk management division of the general services department shall include in his annual report to the legislature an inventory of all public buildings insured by the division, the estimated total value of the buildings, the total insured value of the buildings and the amount of any deductible or maximum loss provisions in the current insurance policy covering the buildings.

E. There is created in the state treasury the "public property reserve fund". The fund shall consist of assessments of state agencies and covered educational entities deposited in the fund, money appropriated to the fund, income earned by the fund and money received as proceeds of insurance purchased pursuant to this section. The fund may be used to:

(1) purchase property insurance;

(2) pay any claim covered by a certificate of coverage issued by the director of the risk management division of the general services department; provided such claims shall only be paid to the extent of actual expenses that have been or will be incurred to repair, reconstruct and replace covered property;

(3) pay the cost of repair, reconstruction and replacement of property and expense incidental thereto arising from damage or destruction covered pursuant to this section;

(4) enter into consulting and other contracts as may be necessary or desirable in carrying out the provisions of this section; and

(5) pay costs and expenses incurred in carrying out the provisions of this section.

F. The director of the legislative council service may elect to cover all or any part of public buildings or property under his jurisdiction through the public property reserve fund by giving written notice of such election to the director of the risk management division of the general services department and paying assessments that the director of the risk management division prescribes.

G. For purposes of this section, "state agency" means the state or any of its branches, agencies, departments, boards, instrumentalities or institutions.

H. For the purposes of this section, "covered educational entities" means school districts as defined in Section 22-1-2 NMSA 1978 and educational institutions established pursuant to Chapter 21, Articles 13, 16 and 17 [repealed] NMSA 1978 that request and are granted coverage from the risk management division of the general services department, if the coverage is commercially unavailable; except that coverage shall be provided to a school district only through the public school insurance authority or its successor unless the district has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its

coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services.

History: 1978 Comp., § 13-5-1, enacted by Laws 1981, ch. 101, § 1; 1983, ch. 301, § 31; 1986, ch. 102, § 4; 1989, ch. 324, § 6; 1996 (1st S.S.), ch. 3, § 3; 2000, ch. 27, § 2.

13-5-2. Repealed.

13-5-3. Public property; local public bodies; insurance; reserves for losses.

A. Local public bodies shall purchase insurance for public buildings under their control against loss or damage by fire, windstorm, hail, smoke, explosion, riot or civil commotion in an amount not less than eighty percent of the replacement cost or actual cash value of the building.

B. Local public bodies may purchase insurance, establish reserves or provide a combination of insurance and reserves to:

(1) repair or replace their buildings if damaged by any peril other than a peril set forth in Subsection A of this section;

(2) repair or replace any personal property which is destroyed or damaged by any peril; or

(3) replace any personal property which is stolen.

C. Any insurance purchased pursuant to Subsections A and B of this section may be purchased with such deductible provisions as may be deemed desirable.

D. For purposes of this section, "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions.

History: 1953 Comp., § 6-1-4.2, enacted by Laws 1977, ch. 385, § 13.

13-5-3.1. Public buildings; compliance with the national flood insurance program.

A. The homeland security and emergency management department, as the state coordinating agency for the national flood insurance program, is designated as the state agency responsible for compliance oversight of that program and shall adopt rules to implement standards for meeting federal floodplain management regulations as set forth in 44 C.F.R. Sections 60.3 through 60.5.

B. The construction industries division of the regulation and licensing department is the state agency designated to review, permit and enforce floodplain management rules for all buildings that are owned or funded, in whole or in part, by the state.

C. Development that is owned or funded, in whole or in part, by the state shall obtain:

(1) floodplain review by a certified floodplain management professional prior to the start of development; and

(2) required permits prior to the start of development.

D. Development that is owned or funded, in whole or in part, by the state shall comply with the most stringent criteria of locally adopted community floodplain management regulations and floodplain management rules adopted by the homeland security and emergency management department.

E. As used in this section, "development" has the meaning set forth in 44 C.F.R. Section 59.1.

History: Laws 2003, ch. 310, § 2; 2021, ch. 97, § 1.

ARTICLE 6
Sale of Public Property

13-6-1. Disposition of obsolete, worn-out or unusable tangible personal property.

A. The governing authority of each state agency, local public body, school district and state educational institution may dispose of any item of tangible personal property belonging to that authority and delete the item from its public inventory upon a specific finding by the authority that the item of property is:

(1) of a current resale value of five thousand dollars ($5,000) or less; and

(2) worn out, unusable or obsolete to the extent that the item is no longer economical or safe for continued use by the body.

B. The governing authority shall, as a prerequisite to the disposition of any items of tangible personal property:

(1) designate a committee of at least three officials of the governing authority to approve and oversee the disposition; and

(2) give notification at least thirty days prior to its action making the deletion by sending a copy of its official finding and the proposed disposition of the property to the state auditor and the appropriate approval authority designated in Section 13-6-2 NMSA 1978, duly sworn and subscribed under oath by each member of the authority approving the action.

C. A copy of the official finding and proposed disposition of the property sought to be disposed of shall be made a permanent part of the official minutes of the governing authority and maintained as a public record subject to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

D. The governing authority shall dispose of the tangible personal property by negotiated sale to any governmental unit of an Indian nation, tribe or pueblo in New Mexico or by negotiated sale or donation to other state agencies, local public bodies, school districts, state educational institutions or municipalities or through the central purchasing office of the governing authority by means of competitive sealed bid or public auction or, if a state agency, through the surplus property bureau of the transportation services division of the general services department.

E. A state agency shall give the surplus property bureau of the transportation services division of the general services department the right of first refusal when disposing of obsolete, worn-out or unusable tangible personal property of the state agency.

F. If the governing authority is unable to dispose of the tangible personal property pursuant to Subsection D or E of this section, the governing authority may sell or, if the property has no value, donate the property to any organization described in Section 501(c)(3) of the Internal Revenue Code of 1986.

G. If the governing authority is unable to dispose of the tangible personal property pursuant to Subsection D, E or F of this section, it may order that the property be destroyed or otherwise permanently disposed of in accordance with applicable laws.

H. If the governing authority determines that the tangible personal property is hazardous or contains hazardous materials and may not be used safely under any circumstances, the property shall be destroyed and disposed of pursuant to Subsection G of this section.

I. No tangible personal property shall be donated to an employee or relative of an employee of a state agency, local public body, school district or state educational institution; provided that nothing in this subsection precludes an employee from participating and bidding for public property at a public auction.

J. This section shall not apply to any property acquired by a museum through abandonment procedures pursuant to the Abandoned Cultural Properties Act [18-10-1 to 18-10-5 NMSA 1978].

K. Notwithstanding the provisions of Subsection A of this section, the department of transportation may sell through public auction or dispose of surplus tangible personal property used to manage, maintain or build roads that exceeds five thousand dollars ($5,000) in value. Proceeds from sales shall be credited to the state road fund. The department of transportation shall notify the department of finance and administration regarding the disposition of all property.

L. If the secretary of public safety finds that the K-9 dog presents no threat to public safety, the K-9 dog shall be released from public ownership as provided in this subsection. The K-9 dog shall first be offered to its trainer or handler free of charge. If the trainer or handler does not want to accept ownership of the K-9 dog, then the K-9 dog shall be offered to an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 free of charge. If both of the above fail, the K-9 dog shall only be sold to a qualified individual found capable of providing a good home to the animal.

History: 1953 Comp., § 6-1-7.1, enacted by Laws 1961, ch. 100, § 1; 1979, ch. 195, § 2; 1984, ch. 47, § 1; 1987, ch. 15, § 1; 1989, ch. 211, § 6; 1995, ch. 181, § 1; 1998, ch. 16, § 1; 2001, ch. 317, § 1; 2007, ch. 57, § 4; 2012, ch. 10, § 1; 2013, ch. 9, § 1.

13-6-2. Sale of property by state agencies or local public bodies; authority to sell or dispose of property; approval of appropriate approval authority.

A. Providing a written determination has been made, a state agency, local public body, school district or state educational institution may sell or otherwise dispose of real or tangible personal property belonging to the state agency, local public body, school district or state educational institution.

B. A state agency, local public body, school district or state educational institution may sell or otherwise dispose of real property:

(1) by negotiated sale or donation to an Indian nation, tribe or pueblo located wholly or partially in New Mexico, or to a governmental unit of an Indian nation, tribe or pueblo in New Mexico, that is authorized to purchase land and control activities on its land by an act of congress or to purchase land on behalf of the Indian nation, tribe or pueblo;

(2) by negotiated sale or donation to other state agencies, local public bodies, school districts or state educational institutions;

(3) through the central purchasing office of the state agency, local public body, school district or state educational institution by means of competitive sealed bid, public auction or negotiated sale to a private person or to an Indian nation, tribe or pueblo in New Mexico; or

(4) if a state agency, through the surplus property bureau of the transportation services division of the general services department.

C. A state agency shall give the surplus property bureau of the transportation services division of the general services department the right of first refusal to dispose of tangible personal property of the state agency. A school district may give the surplus property bureau the right of first refusal to dispose of tangible personal property of the school district.

D. Except as provided in Section 13-6-2.1 NMSA 1978 requiring state board of finance approval for certain transactions, sale or disposition of real or tangible personal property having a current resale value of more than five thousand dollars ($5,000) may be made by a state agency, local public body, school district or state educational institution if the sale or disposition has been approved by the state budget division of the department of finance and administration for state agencies, the local government division of the department of finance and administration for local public bodies, the public education department for school districts and the higher education department for state educational institutions.

E. Prior approval of the appropriate approval authority is not required if the tangible personal property is to be used as a trade-in or exchange pursuant to the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

F. The appropriate approval authority may condition the approval of the sale or other disposition of real or tangible personal property upon the property being offered for sale or donation to a state agency, local public body, school district or state educational institution.

G. The appropriate approval authority may credit a payment received from the sale of such real or tangible personal property to the governmental body making the sale. The state agency, local public body, school district or state educational institution may convey all or any interest in the real or tangible personal property without warranty.

H. This section does not apply to:

(1) computer software of a state agency;

(2) those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico;

(3) the New Mexico state police division of the department of public safety;

(4) the state land office or the department of transportation;

(5) property acquired by a museum through abandonment procedures pursuant to the Abandoned Cultural Properties Act [18-10-1 NMSA 1978];

(6) leases of county hospitals with any person pursuant to the Hospital Funding Act [4-48B-1 NMSA 1978];

(7) property acquired by the economic development department pursuant to the Statewide Economic Development Finance Act [6-25-1 NMSA 1978]; and

(8) the state parks division of the energy, minerals and natural resources department.

History: 1978 Comp., § 13-6-2, enacted by Laws 1979, ch. 195, § 3; 1980, ch. 89, § 17; 1984, ch. 47, § 2; 1987, ch. 15, § 2; 1989, ch. 211, § 7; 1989, ch. 380, § 3; 2001, ch. 291, § 9; 2001, ch. 317, § 2; 2003, ch. 203, § 1; 2003, ch. 349, § 21; 2004, ch. 95, § 1; 2007, ch. 57, § 5.

13-6-2.1. Sales, trades or leases; state board of finance approval.

A. Except as provided in Section 13-6-3 NMSA 1978, for state agencies, any sale, trade or lease for a period of more than five years of real property belonging to a state agency, local public body or school district or any sale, trade or lease of such real property for a consideration of more than twenty-five thousand dollars ($25,000) shall not be valid unless it is approved prior to its effective date by the state board of finance.

B. The provisions of this section shall not be applicable to:

(1) those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico;

(2) the state land office;

(3) the state transportation commission;

(4) the economic development department when disposing of property acquired pursuant to the Statewide Economic Development Finance Act [6-25-1 NMSA 1978]; or

(5) a school district when leasing facilities to a locally chartered or state-chartered charter school.

History: 1978 Comp., § 13-6-2.1, enacted by Laws 1989, ch. 380, § 1; 2001, ch. 122, § 1; 2003, ch. 142, § 3; 2003, ch. 349, § 22; 2011, ch. 69, § 1.

13-6-3. Sale, trade or lease of real property by state agencies; approval of legislature; exceptions.

A. Any sale, trade or lease for a period exceeding twenty-five years in duration of real property belonging to any state agency, which sale, trade or lease shall be for a

consideration of one hundred thousand dollars ($100,000) or more, shall be subject to the ratification and approval of the state legislature prior to the sale, trade or lease becoming effective. The provision specified in Section 13-6-2 NMSA 1978 requiring approval of the state budget division of the department of finance and administration as a prerequisite to consummating such sales or dispositions of realty shall not be applicable in instances wherein the consideration for the sale, trade or lease shall be for a consideration of one hundred thousand dollars ($100,000) or more and wherein a state agency not specifically excepted by Subsection B of this section is a contracting party, and, in every such instance, the legislature shall specify its approval prior to the sale, trade or lease becoming effective.

B. The provisions of this section shall not be applicable as to those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico, the state land office, the state transportation commission or the economic development department when disposing of property acquired pursuant to the Statewide Economic Development Finance Act [Chapter 6, Article 25 NMSA 1978].

History: 1953 Comp., § 6-1-8.1, enacted by Laws 1961, ch. 41, § 1; 1979, ch. 195, § 4; 1987, ch. 15, § 3; 2003, ch. 142, § 4; 2003, ch. 349, § 23.

13-6-4. Definitions.

As used in Chapter 13, Article 6 NMSA 1978:

A. "local public body" means all political subdivisions, except municipalities and school districts, of the state and their agencies, instrumentalities and institutions;

B. "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions other than state educational institutions;

C. "state educational institutions" means those institutions designated by Article 12, Section 11 of the constitution of New Mexico; and

D. "school districts" means those political subdivisions of the state established for the administration of public schools, segregated geographically for taxation and bonding purposes and governed by the Public School Code [Chapter 22 NMSA 1978].

History: 1978 Comp., § 13-6-4, enacted by Laws 1979, ch. 195, § 5; 1987, ch. 15, § 4; 2001, ch. 317, § 3.

13-6-5. Sale of real property by state agencies; land grant right of first refusal.

A. Notwithstanding the provisions of Section 13-6-2 or 67-3-8.2 NMSA 1978, a state agency shall give the board of trustees of a community land grant governed pursuant to

the provisions of Chapter 49, Article 1 NMSA 1978 or by statutes specific to the named land grant the right of first refusal when selling real property belonging to the state agency if the property is land that is located within the boundaries of that community land grant as shown in the United States patent to the grant.

B. If the board of trustees of the community land grant elects not to purchase the land offered for sale or does not respond to the notice of sale within forty-five days of receipt of the notice, the state agency may otherwise dispose of the property in accordance with applicable law.

C. The provisions of this section do not apply to lands held in trust pursuant to the Enabling Act and for which that act prescribes how that land may be disposed of.

D. The provisions of this section do not apply to the conveyance or transfer of state highways to local government entities.

History: Laws 2005, ch. 251 , § 1.

13-6-6. Surplus property bureau created; duties; powers.

A. The "surplus property bureau" is created in the transportation services division of the general services department. The surplus property bureau is designated as the New Mexico agency responsible for distribution of federal surplus personal property, excepting food commodities, in accordance with subdivision (j) of Section 203 of the Federal Property and Administrative Services Act of 1949. The surplus property bureau is also designated as the agency for distribution or disposal of state surplus property.

B. The surplus property bureau shall:

(1) develop a detailed state plan of operation for the management and administration of surplus property acquired from the federal government that complies with the Federal Property and Administrative Services Act of 1949 and regulations promulgated in accordance with that act;

(2) cooperate with the federal government and its agencies in securing the expeditious and equitable distribution of federal surplus personal property, excepting food commodities, to eligible institutions in New Mexico, and assist those institutions in securing that property;

(3) dispose of unusable federal surplus property in accordance with subdivision (j) of Section 203 of the Federal Property and Administrative Services Act of 1949; and

(4) manage a program to recycle, donate, sell or dispose of state surplus tangible personal property.

C. The surplus property bureau may:

(1) enter into agreements with the federal government or its agencies for the purchase, lease, receipt as a loan or gift or any other means of acquisition of any real or personal property without regard to provisions of state law that require:

(a) the posting of notices or public advertising for bids;

(b) the inviting or receiving of competitive bids; or

(c) the delivery of purchases before payment;

(2) enter into cooperative agreements for the sale, transfer or disposal of federal surplus property that has not been distributed;

(3) enter into contracts with other state agencies for the purpose of acquiring or disposing of any tangible personal property originally purchased with state money as specified by rule of the transportation services division of the general services department; and

(4) designate the representative of a user to enter a bid at a sale of real or personal property owned by the United States government or any agency or department thereof and authorize that person to make payment required in connection with the bidding.

History: Laws 2007, ch. 57, § 1.

13-6-7. Surplus property fund; created; expenditures.

A. The "surplus property fund" is created as a nonreverting fund in the state treasury. The fund consists of money received from the sale of surplus property by the surplus property bureau of the transportation services division of the general services department. The surplus property bureau shall administer the fund, and money in the fund is subject to appropriation by the legislature to carry out activities relating to the acquisition, transfer and sale of surplus government property. Money in the fund shall be disbursed on vouchers approved and warrants signed by the director of the transportation services division of the general services department or the director's authorized representative.

B. Money in the surplus property fund attributable to the sale of federal property shall be held and accounted for separately from money attributable to the purchase or sale of state property.

History: Laws 2007, ch. 57, § 2.

13-6-8. Disposition of state property.

The surplus property bureau of the transportation services division of the general services department may dispose of tangible personal property, except property acquired from the United States government, by advertising the availability of the property as follows:

A. for the first forty-five-day period, to any agency that has entered into an agreement with the bureau;

B. for the second forty-five-day period, to any agency or tax-exempt entity that has filed its written certificate of tax exemption with the bureau;

C. for the third forty-five-day period, to any agency or tax-exempt entity or to the public through a storefront operation on days and at times specified by rule of the bureau; and

D. after the third forty-five-day period, by auction or any other means of disposal in compliance with environmental standards for disposal of tangible personal property.

History: Laws 2007, ch. 57, § 3.

ARTICLE 7
Health Care Purchasing

13-7-1. Short title.

Chapter 13, Article 7 NMSA 1978 may be cited as the "Health Care Purchasing Act".

History: Laws 1997, ch. 74, § 1; 2003, ch. 391, § 1.

13-7-2. Purpose of act.

The purpose of the Health Care Purchasing Act is to ensure public employees, public school employees and retirees of public employment and the public schools access to more affordable and enhanced quality of health insurance through cost containment and savings effected by procedures for consolidating the purchasing of publicly financed health insurance.

History: Laws 1997, ch. 74, § 2.

13-7-3. Definitions.

As used in the Health Care Purchasing Act:

A. "consolidated purchasing" means a single process for the procurement of and contracting for all health care benefits by the publicly funded insurance agencies in

compliance with the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] and includes associated activities related to the procurement such as actuarial, cost containment, benefits consultation and analysis; and

B. "publicly funded health care agency" means the:

(1) state health benefits division and the group benefits committee of the health care authority;

(2) retiree health care authority;

(3) public school insurance authority; and

(4) publicly funded health care program of any public school district with a student enrollment in excess of sixty thousand students.

History: Laws 1997, ch. 74, § 3; 2024, ch. 39, § 19.

The 2024 amendment, effective July 1, 2024, revised the definitions of the terms "consolidated purchasing" and "publicly funded health care agency" as used in the Health Care Purchasing Act; in Subsection A, after "procurement of" added "and contracting for"; and in Subsection B, Paragraph B(1), deleted "risk management" and added "state health benefits", and after "committee of the" deleted "general services department" and added "health care authority".

13-7-4. Mandatory consolidated purchasing.

A. The agencies shall enter into a cooperative consolidated purchasing effort to provide plans of health care benefits for the benefit of eligible participants of the respective agencies. The request for proposal shall set forth one or more plans of health care benefits and shall include accommodation of fully funded arrangements as well as varying degrees of self-funded pool options.

B. A consolidated purchasing request for proposals for all health care benefits by the publicly funded health care agencies shall be issued on or before July 1, 1999 and any contracts for health care benefits renewed or issued on or after July 1, 2000 shall be the result of consolidated purchasing.

C. All requests for proposals issued as part of the consolidated purchasing shall include at least one distinct service area consisting of the Albuquerque metropolitan area. Proposals on a distinct service area shall be evaluated separately.

History: Laws 1997, ch. 74, § 4.

13-7-5. Consolidated purchasing for other persons.

A. Counties, municipalities, state educational institutions and other political subdivisions that wish to use the consolidated purchasing single process for the procurement of health care benefits shall create or enter into an existing association, cooperative or other mutual alliance to create larger pools of eligible participants.

B. Counties, municipalities, state educational institutions and other political subdivisions that wish to use the consolidated purchasing single process shall, through their respective association, cooperative or mutual alliance, participate in the subsequent consolidated purchasing single process with the publicly funded health care agencies.

History: Laws 2001, ch. 351, § 1.

13-7-6. Use of social security numbers.

The publicly funded health care agencies, political subdivisions and other persons providing health care benefits through the consolidated purchasing single process, in compliance with state and federal law, shall not require the use of participants' social security numbers as health care benefit plan identification numbers.

History: Laws 2001, ch. 351, § 2.

13-7-7. Consolidated administrative functions; benefit.

A. The publicly funded health care agencies, political subdivisions and other persons participating in the consolidated purchasing single process pursuant to the Health Care Purchasing Act may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] with the publicly funded health care agencies and political subdivisions to determine assessments or provisions of resources to consolidate, standardize and administer the consolidated purchasing single process and subsequent activities pursuant to the Health Care Purchasing Act. The publicly funded health care agencies, political subdivisions and other persons participating in the consolidated purchasing single process pursuant to the Health Care Purchasing Act may enter into contracts with nonpublic persons to provide the service of determining assessments or provision of resources for consolidation, standardization and administrative activities.

B. Each agency shall retain its responsibility to determine policy direction of the benefit plans, plan development, training and coordination with respect to participants and its benefits staff, as well as to respond to benefits eligibility inquiries and establish and enforce eligibility rules.

C. Notwithstanding Subsection B of this section, publicly funded health care agencies, political subdivisions and other persons participating in the consolidated purchasing single process pursuant to the Health Care Purchasing Act shall provide coverage for children, from birth through three years of age, for or under the family,

infant, toddler program administered by the early childhood education and care department, provided eligibility criteria are met, for a maximum benefit of three thousand five hundred dollars ($3,500) annually for medically necessary early intervention services provided as part of an individualized family service plan and delivered by certified and licensed personnel who are working in early intervention programs approved by the early childhood education and care department. No payment under this subsection shall be applied against any maximum lifetime or annual limits specified in the policy, health benefits plan or contract.

History: Laws 2001, ch. 351, § 3; 2005, ch. 157, § 1; 2019, ch. 48, § 14.

13-7-8. Maximum age of dependent.

Any group health care coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act on or after July 1, 2003 that offers coverage of an insured's dependent shall not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's twenty-fifth birthday, regardless of whether the dependent is enrolled in an educational institution.

History: Laws 2003, ch. 391, § 2.

13-7-9. General anesthesia and hospitalization for dental surgery.

A. Group health care coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage for hospitalization and general anesthesia provided in a hospital or ambulatory surgical center for dental surgery for the following:

(1) insureds exhibiting physical, intellectual or medically compromising conditions for which dental treatment under local anesthesia, with or without additional adjunctive techniques and modalities, cannot be expected to provide a successful result and for which dental treatment under general anesthesia can be expected to produce superior results;

(2) insureds for whom local anesthesia is ineffective because of acute infection, anatomic variation or allergy;

(3) insured children or adolescents who are extremely uncooperative, fearful, anxious or uncommunicative with dental needs of such magnitude that treatment should not be postponed or deferred and for whom lack of treatment can be expected to result in dental or oral pain or infection, loss of teeth or other increased oral or dental morbidity;

(4) insureds with extensive oral-facial or dental trauma for which treatment under local anesthesia would be ineffective or compromised; or

(5) other procedures for which hospitalization or general anesthesia in a hospital or ambulatory surgical center is medically necessary.

B. The provisions of this section do not apply to short-term travel, accident-only or limited or specified disease policies.

C. Coverage for dental surgery may be subject to copayments, deductibles and coinsurance subject to network and prior authorization requirements consistent with those imposed on other benefits under the same group health care coverage, including any form of self-insurance.

History: Laws 2007, ch. 218, § 1.

13-7-10. Hearing aid coverage for children required.

A. Group health care coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage for a hearing aid and any related service for the full cost of one hearing aid per hearing-impaired ear up to two thousand two hundred dollars ($2,200) every thirty-six months for hearing aids for insured children under eighteen years of age or under twenty-one years of age if still attending high school. The insured may choose a higher priced hearing aid and may pay the difference in cost above the two-thousand-two-hundred-dollar ($2,200) limit as provided in this subsection without financial or contractual penalty to the insured or to the provider of the hearing aids.

B. Each insurer that delivers, issues for delivery or renews under the Health Care Purchasing Act any group health care coverage, including any form of self-insurance, may make available to the policyholder the option of purchasing additional hearing aid coverage that exceeds the services described in this section.

C. Hearing aid coverage offered shall include fitting and dispensing services, including providing ear molds as necessary to maintain optimal fit, provided by an audiologist, a hearing aid dispenser or a physician, licensed in New Mexico.

D. The provisions of this section do not apply to short-term travel, accident-only or limited or specified disease policies.

E. Coverage for hearing aids may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same group health care coverage, including any form of self-insurance.

F. For the purposes of this section, "hearing aid" means durable medical equipment that is of a design and circuitry to optimize audibility and listening skills in the environment commonly experienced by children.

History: Laws 2007, ch. 356, § 1.

13-7-11. Required coverage of patient costs incurred in cancer clinical trials.

Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage pursuant to Section 59A-22-43 NMSA 1978 for routine patient care costs incurred as a result of the patient's participation in cancer clinical trials.

History: Laws 2009, ch. 212, § 1.

13-7-12. Coverage for orally administered anticancer medications; limits on patient costs.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that provides coverage for cancer treatment shall provide coverage for a prescribed, orally administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits by the plan.

B. A group health plan shall not increase patient cost-sharing for anticancer medications in order to achieve compliance with the provisions of this section.

C. Coverage of orally administered anticancer medication shall not be subject to any prior authorization, dollar limit, copayment, deductible or coinsurance provision that does not apply to intravenously administered or injected anticancer medication used to kill or slow the growth of cancerous cells.

History: Laws 2011, ch. 55, § 1.

13-7-13. Coverage of prescription eye drop refills.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that provides coverage for prescription eye drops shall not deny coverage for a renewal of prescription eye drops when:

(1) the renewal is requested by the insured at least twenty-three days for a thirty-day supply of eye drops, forty-five days for a sixty-day supply of eye drops or sixty-eight days for a ninety-day supply of eye drops from the later of the date that the original prescription was dispensed to the insured or the date that the last renewal of the prescription was dispensed to the insured; and

(2) the prescriber indicates on the original prescription that additional quantities are needed and that the renewal requested by the insured does not exceed the number of additional quantities needed.

B. As used in this section, "prescriber" means a person who is authorized pursuant to the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] to prescribe prescription eye drops.

History: Laws 2012, ch. 27, § 1.

13-7-14. Coverage for telemedicine services.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage for services provided via telemedicine to the same extent that the group health plan covers the same services when those services are provided via in-person consultation or contact. A group health plan shall not impose any unique condition for coverage of services provided via telemedicine.

B. A group health plan shall not impose an originating-site restriction with respect to telemedicine services or distinguish between telemedicine services provided to patients in rural locations and those provided to patients in urban locations; provided that the provisions of this section shall not be construed to require coverage of an otherwise noncovered benefit.

C. A determination by a group health plan that health care services delivered through the use of telemedicine are not covered under the plan shall be subject to review and appeal pursuant to the Patient Protection Act [Chapter 59A, Article 57 NMSA 1978].

D. The provisions of this section shall not apply in the event that federal law requires the state to make payments on behalf of enrollees to cover the costs of implementing this section.

E. Nothing in this section shall require a health care provider to be physically present with a patient at the originating site unless the consulting telemedicine provider deems it necessary.

F. A group health plan shall not limit coverage of services delivered via telemedicine only to those health care providers who are members of the group health plan provider network where no in-network provider is available and accessible, as availability and accessibility are defined in network adequacy standards issued by the superintendent of insurance.

G. A group health plan may charge a deductible, copayment or coinsurance for a health care service delivered via telemedicine if it does not exceed the deductible, copayment or coinsurance applicable to a service delivered via in-person consultation or contact.

H. A group health plan shall not impose any annual or lifetime dollar maximum on coverage for services delivered via telemedicine, other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the group health plan, or impose upon any person receiving benefits pursuant to this section any copayment, coinsurance or deductible amounts, or any plan year, calendar year, lifetime or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the group health plan.

I. A group health plan shall reimburse for health care services delivered via telemedicine on the same basis and at least the same rate that the group health plan reimburses for comparable services delivered via in-person consultation or contact.

J. Telemedicine used to provide clinical services shall be encrypted and shall conform to state and federal privacy laws.

K. The provisions of this section shall not apply to group health coverage intended to supplement major medical group-type coverage, such as medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or any other limited-benefit health insurance policy.

L. As used in this section:

(1) "consulting telemedicine provider" means a health care provider that delivers telemedicine services from a location remote from an originating site;

(2) "health care provider" means a duly licensed hospital or other licensed facility, physician or other health care professional authorized to furnish health care services within the scope of the professional's license;

(3) "in real time" means occurring simultaneously, instantaneously or within seconds of an event so that there is little or no noticeable delay between two or more events;

(4) "originating site" means a place at which a patient is physically located and receiving health care services via telemedicine;

(5) "store-and-forward technology" means electronic information, imaging and communication, including interactive audio, video and data communications, that is transferred or recorded or otherwise stored for asynchronous use; and

(6) "telemedicine" means the use of telecommunications and information technology to provide clinical health care at a site distinct from the patient. "Telemedicine" allows health care professionals to evaluate, diagnose and treat patients in remote locations using telecommunications and information technology in real time or asynchronously, including the use of interactive simultaneous audio and video or store-

and-forward technology, or remote patient monitoring and telecommunications in order to deliver health care services to a site where the patient is located, along with the use of electronic media and health information. "Telemedicine" allows patients in remote locations to access medical expertise without travel.

History: Laws 2013, ch. 105, § 1; 2019, ch. 255, § 1.

13-7-15. Prescription drugs; prohibited formulary changes; notice requirements.

A. As of January 1, 2014, group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that provides coverage for prescription drugs categorized or tiered for purposes of cost-sharing through deductibles or coinsurance obligations shall not make any of the following changes to coverage for a prescription drug within one hundred twenty days of any previous change to coverage for that prescription drug, unless a generic version of the prescription drug is available:

(1) reclassify a drug to a higher tier of the formulary;

(2) reclassify a drug from a preferred classification to a non-preferred classification, unless that reclassification results in the drug moving to a lower tier of the formulary;

(3) increase the cost-sharing, copayment, deductible or co-insurance charges for a drug;

(4) remove a drug from the formulary;

(5) establish a prior authorization requirement;

(6) impose or modify a drug's quantity limit; or

(7) impose a step-therapy restriction.

B. The administrator for the group health coverage shall give the affected enrollee at least sixty days' advance written notice of the impending change when it is determined that one of the following modifications will made to a formulary:

(1) reclassification of a drug to a higher tier of the formulary;

(2) reclassification of a drug from a preferred classification to a non-preferred classification, unless that reclassification results in the drug moving to a lower tier of the formulary;

(3) an increase in the cost-sharing, copayment, deductible or coinsurance charges for a drug;

(4) removal of a drug from the formulary;

(5) addition of a prior authorization requirement;

(6) imposition or modification of a drug's quantity limit; or

(7) imposition of a step-therapy restriction for a drug.

C. Notwithstanding the provisions of Subsections A and B of this section, the administrator for group health coverage may immediately and without prior notice remove a drug from the formulary if the drug:

(1) is deemed unsafe by the federal food and drug administration; or

(2) has been removed from the market for any reason.

D. The administrator for group health coverage prescription drug benefits shall provide to each affected enrollee the following information in plain language regarding prescription drug benefits:

(1) notice that the group health plan uses one or more drug formularies;

(2) an explanation of what the drug formulary is;

(3) a statement regarding the method the group health plan uses to determine the prescription drugs to be included in or excluded from a drug formulary; and

(4) a statement of how often the group health plan administrator reviews the contents of each drug formulary.

E. As used in this section:

(1) "formulary" means the list of prescription drugs covered by group health coverage; and

(2) "step therapy" means a protocol that establishes the specific sequence in which prescription drugs for a specified medical condition and medically appropriate for a particular patient are to be prescribed.

History: Laws 2013, ch. 138, § 1.

13-7-16. Coverage for autism spectrum disorder diagnosis and treatment; permissible limitations.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage for:

(1) well-baby and well-child screening for diagnosing the presence of autism spectrum disorder; and

(2) treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy and applied behavioral analysis.

B. Coverage required pursuant to Subsection A of this section:

(1) shall be limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan;

(2) shall not be denied on the basis that the services are habilitative or rehabilitative in nature;

(3) may be subject to other general exclusions of the group health coverage, including coordination of benefits, participating provider requirements, restrictions on services provided by family or household members and utilization review of health care services, including the review of medical necessity, case management and other managed care provisions; and

(4) may be limited to exclude coverage for services received under the federal Individuals with Disabilities Education Improvement Act of 2004 and related state laws that place responsibility on state and local school boards for providing specialized education and related services to children three to twenty-two years of age who have autism spectrum disorder.

C. Coverage for treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy and applied behavioral analysis shall not be denied to an enrollee on the basis of the enrollee's age.

D. The coverage required pursuant to Subsection A of this section shall not be subject to deductibles or coinsurance provisions that are less favorable to a covered individual than the deductibles or coinsurance provisions that apply to physical illnesses that are generally covered under the group health coverage, except as otherwise provided in Subsection B of this section.

E. A group health plan shall not deny or refuse health coverage for medically necessary services or refuse to contract with, renew, reissue or otherwise terminate or restrict health coverage for an individual because the individual is diagnosed as having autism spectrum disorder.

F. The treatment plan required pursuant to Subsection B of this section shall include all elements necessary for the group health coverage to pay claims appropriately. These elements include:

(1) the diagnosis;

(2) the proposed treatment by types;

(3) the frequency and duration of treatment;

(4) the anticipated outcomes stated as goals;

(5) the frequency with which the treatment plan will be updated; and

(6) the signature of the treating physician.

G. This section shall not be construed as limiting benefits and coverage otherwise available to an insured under group health coverage.

H. The provisions of this section shall not apply to policies intended to supplement major medical group-type coverages such as medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or other limited-benefit health insurance policies.

I. As used in this section:

(1) "autism spectrum disorder" means:

(a) a condition that meets the diagnostic criteria for autism spectrum disorder published in the current edition of the *Diagnostic and Statistical Manual of Mental Disorders* published by the American psychiatric association; or

(b) a condition diagnosed as autistic disorder, Asperger's disorder, pervasive development disorder not otherwise specified, Rett's disorder or childhood disintegrative disorder pursuant to diagnostic criteria published in a previous edition of the *Diagnostic and Statistical Manual of Mental Disorders* published by the American psychiatric association;

(2) "habilitative or rehabilitative services" means treatment programs that are necessary to develop, maintain and restore to the maximum extent practicable the functioning of an individual; and

(3) "high school" means a school providing instruction for any of the grades nine through twelve.

History: Laws 2013, ch. 185, § 1; 2019, ch. 119, § 1.

13-7-17. Pharmacy benefits; prescription synchronization.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers a prescription drug benefit shall allow an enrollee to fill or refill a prescription for less than a thirty-day supply of the prescription drug, and apply a prorated daily copayment or coinsurance for the fill or refill, if:

(1) the prescribing practitioner or the pharmacist determines the fill or refill to be in the best interest of the patient;

(2) the patient requests or agrees to receive less than a thirty-day supply of the prescription drug; and

(3) the reduced fill or refill is made for the purpose of synchronizing the patient's prescription drug fills.

B. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers a prescription drug benefit shall not:

(1) deny coverage for the filling of a chronic medication when the fill is made in accordance with a plan to synchronize multiple prescriptions for the enrollee pursuant to Subsection A of this section established among the group health plan, the prescribing practitioner and a pharmacist. The group health plan shall allow a pharmacy to override any denial indicating that a prescription is being refilled too soon for the purposes of medication synchronization; and

(2) prorate a dispensing fee to a pharmacy that fills a prescription with less than a thirty-day supply of prescription drug pursuant to Subsection A of this section. The group health plan shall pay in full a dispensing fee for a partially filled or refilled prescription for each prescription dispensed, regardless of any prorated copayment or coinsurance that the enrollee may pay for prescription synchronization services.

History: Laws 2015, ch. 65, § 1.

13-7-18. Prescription drug coverage; step therapy protocols; clinical review criteria; exceptions.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that provides coverage for prescription drugs for which any step therapy protocols are required shall establish clinical review criteria for those step therapy protocols. The clinical review criteria shall be based on clinical practice guidelines that:

(1) recommend that the prescription drugs subject to step therapy protocols be taken in the specific sequence required by the step therapy protocol;

(2) are developed and endorsed by an interdisciplinary panel of experts that manages conflicts of interest among the members of the panel of experts by:

(a) requiring members to: 1) disclose any potential conflicts of interest with group health plan administrators, insurers, health maintenance organizations, health care plans, pharmaceutical manufacturers, pharmacy benefits managers and any other entities; and 2) recuse themselves if there is a conflict of interest; and

(b) using analytical and methodological experts to work to provide objectivity in data analysis and ranking of evidence through the preparation of evidence tables and facilitating consensus;

(3) are based on high-quality studies, research and medical practice;

(4) are created pursuant to an explicit and transparent process that:

(a) minimizes bias and conflicts of interest;

(b) explains the relationship between treatment options and outcomes;

(c) rates the quality of the evidence supporting recommendations; and

(d) considers relevant patient subgroups and preferences; and

(5) take into account the needs of atypical patient populations and diagnoses.

B. In the absence of clinical guidelines that meet the requirements of Subsection A of this section, peer-reviewed publications may be substituted.

C. When a group health plan restricts coverage of a prescription drug for the treatment of any medical condition through the use of a step therapy protocol, an enrollee and the practitioner prescribing the prescription drug shall have access to a clear, readily accessible and convenient process to request a step therapy exception determination. A group health plan may use its existing medical exceptions process in accordance with the provisions of Subsections D through I of this section to satisfy this requirement. The process shall be made easily accessible for enrollees and practitioners on the group health plan's publicly accessible website.

D. A group health plan shall expeditiously grant an exception to the group health plan's step therapy protocol, based on medical necessity and a clinically valid explanation from the patient's prescribing practitioner as to why a drug on the plan's formulary that is therapeutically equivalent to the prescribed drug should not be substituted for the prescribed drug, if:

(1) the prescription drug that is the subject of the exception request is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient;

(2) the prescription drug that is the subject of the exception request is expected to be ineffective based on the known clinical characteristics of the patient and the known characteristics of the prescription drug regimen;

(3) while under the enrollee's current health coverage or previous health coverage, the enrollee has tried the prescription drug that is the subject of the exception request or another prescription drug in the same pharmacologic class or with the same mechanism of action as the prescription drug that is the subject of the exception request and that prescription drug was discontinued due to lack of efficacy or effectiveness, diminished effect or an adverse event; or

(4) the prescription drug required pursuant to the step therapy protocol is not in the best interest of the patient, based on clinical appropriateness, because the patient's use of the prescription drug is expected to:

(a) cause a significant barrier to the patient's adherence to or compliance with the patient's plan of care;

(b) worsen a comorbid condition of the patient; or

(c) decrease the patient's ability to achieve or maintain reasonable functional ability in performing daily activities.

E. Upon the granting of an exception to a group health plan's step therapy protocol, the group health plan administrator shall authorize continuing coverage for the prescription drug that is the subject of the exception request for no less than the duration of the therapeutic effect of the drug. The group health plan shall include in its evidence of coverage language describing an enrollee's rights pursuant to this subsection.

F. A group health plan shall respond with its decision on an enrollee's exception request within seventy-two hours of receipt. In cases where exigent circumstances exist, a group health plan shall respond within twenty-four hours of receipt of the exception request. In the event the group health plan does not respond to an exception request within the time frames required pursuant to this subsection, the exception request shall be granted.

G. A group health plan administrator's denial of a request for an exception for step therapy protocols shall be subject to review and appeal pursuant to the Patient Protection Act [Chapter 59A, Article 57 NMSA 1978].

H. After an enrollee has made an exception request in accordance with the provisions of this section, a group health plan shall authorize continued coverage of a prescription drug that is the subject of the exception request pending the determination of the exception request.

I. The provisions of this section shall not be construed to prevent a:

(1) group health plan from requiring a patient to try a biosimilar, interchangeable biologic or generic equivalent of a prescription drug before providing coverage for the equivalent brand-name prescription drug; or

(2) practitioner from prescribing a prescription drug that the practitioner has determined to be medically necessary.

J. As used in this section, "medical necessity" or "medically necessary" means health care services determined by a practitioner, in consultation with the group health plan administrator, to be appropriate or necessary according to:

(1) any applicable, generally accepted principles and practices of good medical care;

(2) practice guidelines developed by the federal government or national or professional medical societies, boards or associations; or

(3) any applicable clinical protocols or practice guidelines developed by the group health plan consistent with federal, national and professional practice guidelines. These standards shall be applied to decisions related to the diagnosis or direct care and treatment of a physical or behavioral health condition, illness, injury or disease.

History: Laws 2018, ch. 9, § 1; 2024, ch. 42, § 1.

13-7-19. Prior authorization for gynecological or obstetrical ultrasounds prohibited.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that provides coverage for gynecological or obstetrical ultrasounds shall not require prior authorization for gynecological or obstetrical ultrasounds.

B. Nothing in this section shall be construed to require payment for a gynecological or obstetrical ultrasound that is not:

(1) medically necessary; or

(2) a covered benefit.

C. As used in this section, "prior authorization" means advance approval that is required as a condition precedent to payment for medical care or related benefits rendered to a covered person, including prospective or utilization review conducted prior to the provision of covered medical care or related benefits.

History: Laws 2019, ch. 182, § 1

13-7-20. Prior Authorization Act.

Benefits administrators of group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act are subject to and shall comply with the Prior Authorization Act [59A-22B-1 to 59A-22B-5 NMSA 1978].

History: Laws 2019, ch. 187, § 1

13-7-21. Physical rehabilitation services; limits on cost sharing.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers coverage of physical rehabilitation services shall not impose a member cost share for physical rehabilitation services that is greater than that for primary care services on a coinsurance percentage basis when coinsurance is applied or on an absolute dollar amount when a copay is applied.

B. As used in this section:

(1) "physical rehabilitation services" means services aimed at maximizing an individual's level of function, returning to a prior level of function or maintaining or slowing the decline of function, which services are provided by or under the direction of a licensed physical therapist, occupational therapist or speech therapist; and

(2) "primary care services" means the first level of basic or general health care for a person's health needs, including diagnostic and treatment services, initiation of referrals for other health care services and maintenance of the continuity of care when appropriate.

History: Laws 2019, ch. 188, § 1.

13-7-22. Coverage for contraception.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that provides coverage for prescription drugs shall provide, at a minimum, the following coverage:

(1) at least one product or form of contraception in each of the contraceptive method categories identified by the federal food and drug administration;

(2) a sufficient number and assortment of oral contraceptive pills to reflect the variety of oral contraceptives approved by the federal food and drug administration; and

(3) clinical services related to the provision or use of contraception, including consultations, examinations, procedures, ultrasound, anesthesia, patient education, counseling, device insertion and removal, follow-up care and side-effects management.

B. Except as provided in Subsection C of this section, the coverage required pursuant to this section shall not be subject to:

(1) enrollee cost sharing;

(2) utilization review;

(3) prior authorization or step therapy requirements; or

(4) any other restrictions or delays on the coverage.

C. A group health plan may discourage brand-name pharmacy drugs or items by applying cost sharing to brand-name drugs or items when at least one generic or therapeutic equivalent is covered within the same method of contraception without patient cost sharing; provided that when an enrollee's health care provider determines that a particular drug or item is medically necessary, the group health plan shall cover the brand-name pharmacy drug or item without cost sharing. Medical necessity may include considerations such as severity of side effects, differences in permanence or reversibility of contraceptives and ability to adhere to the appropriate use of the drug or item, as determined by the attending provider.

D. A group health plan administrator shall grant an enrollee an expedited hearing to appeal any adverse determination made relating to the provisions of this section. The process for requesting an expedited hearing pursuant to this subsection shall:

(1) be easily accessible, transparent, sufficiently expedient and not unduly burdensome on an enrollee, the enrollee's representative or the enrollee's health care provider;

(2) defer to the determination of the enrollee's health care provider; and

(3) provide for a determination of the claim according to a time frame and in a manner that takes into account the nature of the claim and the medical exigencies involved for a claim involving an urgent health care need.

E. A group health plan shall not require a prescription for any drug, item or service that is available without a prescription.

F. A group health plan shall provide coverage and shall reimburse a health care provider or dispensing entity on a per-unit basis for dispensing a six-month supply of contraceptives at one time; provided that the contraceptives are prescribed and self-administered.

G. Nothing in this section shall be construed to:

(1) require a health care provider to prescribe six months of contraceptives at one time; or

(2) permit a group health plan to limit coverage or impose cost sharing for an alternate method of contraception if an enrollee changes contraceptive methods before exhausting a previously dispensed supply.

H. The provisions of this section shall not apply to short-term travel, accident-only, hospital-indemnity-only, limited-benefit or disease-specific group health plans.

I. For the purposes of this section:

(1) "contraceptive method categories identified by the federal food and drug administration":

(a) means tubal ligation; sterilization implant; copper intrauterine device; intrauterine device with progestin; implantable rod; contraceptive shot or injection; combined oral contraceptives; extended or continuous use oral contraceptives; progestin-only oral contraceptives; patch; vaginal ring; diaphragm with spermicide; sponge with spermicide; cervical cap with spermicide; male and female condoms; spermicide alone; vasectomy; ulipristal acetate; levonorgestrel emergency contraception; and any additional method categories of contraception approved by the federal food and drug administration; and

(b) does not mean a product that has been recalled for safety reasons or withdrawn from the market;

(2) "cost sharing" means a deductible, copayment or coinsurance that an enrollee is required to pay in accordance with the terms of a group health plan; and

(3) "health care provider" means an individual licensed to provide health care in the ordinary course of business.

History: Laws 2019, ch. 263, § 1.

13-7-23. Pharmacist prescriptive authority services; reimbursement parity.

A group health plan shall reimburse a participating provider that is a certified pharmacist clinician or pharmacist certified to provide a prescriptive authority service who provides a service at the standard contracted rate that the group health plan reimburses, for the same service under that group health plan, any licensed physician or physician assistant licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] or any advanced practice certified nurse practitioner licensed pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978].

History: Laws 2020, ch. 58, § 1; 2021, ch. 54, § 2.

13-7-24. Heart artery calcium scan coverage.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage for eligible insureds to receive a heart artery calcium scan.

B. Coverage provided pursuant to this section shall:

(1) be limited to the provision of a heart artery calcium scan to an eligible insured to be used as a clinical management tool;

(2) be provided every five years if an eligible insured has previously received a heart artery calcium score of zero; and

(3) not be required for future heart artery calcium scans if an eligible insured receives a heart artery calcium score greater than zero.

C. At its discretion or as required by law, an insurer may offer or refuse coverage for further cardiac testing or procedures for eligible insureds based upon the results of a heart artery calcium scan.

D. The provisions of this section shall not apply to short-term travel, accident-only or limited or specified-disease policies, plans or certificates of health insurance.

E. As used in this section:

(1) "eligible insured" means an insured who:

(a) is a person between the ages of forty-five and sixty-five; and

(b) has an intermediate risk of developing coronary heart disease as determined by a health care provider based upon a score calculated from an evidence-based algorithm widely used in the medical community to assess a person's ten-year

cardiovascular disease risk, including a score calculated using a pooled cohort equation;

(2) "health care provider" means a physician, physician assistant, nurse practitioner or other health care professional authorized to furnish health care services within the scope of the professional's license; and

(3) "heart artery calcium scan" means a computed tomography scan measuring coronary artery calcium for atherosclerosis and abnormal artery structure and function.

History: Laws 2020, ch. 79, § 1.

13-7-25. Coverage for individuals with diabetes; insulin for diabetes; cost-sharing cap.

A. Group health care coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall cap the amount an insured is required to pay for a preferred formulary prescription insulin drug or a medically necessary alternative at an amount not to exceed a total of twenty-five dollars ($25.00) per thirty-day supply and shall provide coverage for individuals with diabetes as required by law for each health care insurer, including:

(1) group health insurance policies, health care plans, certificates of health insurance and managed health care plans delivered or issued for delivery in New Mexico;

(2) group health plans provided through a cooperative;

(3) group health maintenance organization contracts delivered or issued for delivery in New Mexico; and

(4) health benefit plans.

B. As used in this section, "health care insurer" means a person who provides health insurance in this state, including a licensed insurance company, a licensed fraternal benefit society, a prepaid hospital or medical service plan, a health maintenance organization, a managed care organization, a nonprofit health care organization, a multiple-employer welfare arrangement or any other person providing a plan of health insurance subject to state regulation.

History: Laws 2020, ch. 36, § 1; 2023, ch. 50, § 1.

13-7-26. Behavioral health services; elimination of cost sharing.

A. Until January 1, 2027, group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers coverage of behavioral health services shall not impose cost sharing on those behavioral health services.

B. For the purposes of this section:

(1) "behavioral health services" means professional and ancillary services for the treatment, habilitation, prevention and identification of mental illnesses, substance abuse disorders and trauma spectrum disorders, including inpatient, detoxification, residential treatment and partial hospitalization, intensive outpatient therapy, outpatient and all medications, including brand-name pharmacy drugs when generics are unavailable;

(2) "coinsurance" means a cost-sharing method that requires an enrollee to pay a stated percentage of medical expenses after any deductible amount is paid; provided that coinsurance rates may differ for different types of services under the same group health plan;

(3) "copayment" means a cost-sharing method that requires an enrollee to pay a fixed dollar amount when health care services are received, with the plan administrator paying the balance of the allowable amount; provided that there may be different copayment requirements for different types of services under the same group health plan; and

(4) "cost sharing" means a copayment, coinsurance, deductible or any other form of financial obligation of an enrollee other than a premium or a share of a premium, or any combination of any of these financial obligations, as defined by the terms of a group health plan.

History: Laws 2021, ch. 136, § 3.

13-7-27. Diagnostic and supplemental breast examinations.

A. Group health coverage, including self-insurance, offered, issued, amended, delivered or renewed under the Health Care Purchasing Act that provides coverage for diagnostic and supplemental breast examinations shall not impose cost sharing for diagnostic and supplemental breast examinations.

B. The provisions of this section do not apply to excepted benefit plans as provided pursuant to the Short-Term Health Plan and Excepted Benefit Act [Chapter 59A, Article 23G NMSA 1978], catastrophic plans as defined pursuant to 42 USCA Section 18022(e) or high deductible health plans with health savings accounts until an eligible insured's deductible has been met, unless otherwise allowed pursuant to federal law.

C. As used in this section:

(1) "cost sharing" means a deductible, coinsurance, copayment and any maximum limitation on the application of such a deductible, coinsurance, copayment or similar out-of-pocket expense;

(2) "diagnostic breast examination" means a medically necessary and clinically appropriate examination of the breast using diagnostic mammography, breast magnetic resonance imaging or breast ultrasound that evaluates an abnormality:

(a) seen or suspected from a screening examination for breast cancer; or

(b) detected by another means of examination; and

(3) "supplemental breast examination" means a medically necessary and clinically appropriate examination of the breast using breast magnetic resonance imaging or breast ultrasound that is:

(a) used to screen for breast cancer when there is no abnormality seen or suspected; and

(b) based on personal or family medical history or additional factors that may increase the individual's risk of breast cancer.

History: Laws 2023, ch. 12, § 1.

13-7-28. Chiropractic physician services; limits on cost sharing and coinsurance.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers coverage of the services of a chiropractic physician shall not impose a copayment or coinsurance on those chiropractic physician services that exceeds the copayment or coinsurance imposed for primary care services.

B. As used in this section, "primary care services" means the first level of basic or general health care for a person's health needs, including diagnostic and treatment services, initiation of referrals for other health care services and maintenance of the continuity of care when appropriate.

History: Laws 2023, ch. 51, § 1.

13-7-29. Sexually transmitted infection care; cost sharing eliminated.

A. Group health coverage, including self-insurance, offered, issued, amended, delivered or renewed under the Health Care Purchasing Act, that offers coverage for

preventive care or treatment of sexually transmitted infections shall not impose cost sharing on eligible insureds.

B. Pursuant to this section, preventive care or treatment of sexually transmitted infections shall not be conditioned upon the gender identity of the insured.

C. The provisions of Subsection A of this section do not apply to high-deductible health care plans with health savings accounts until an eligible insured's deductible has been met, unless otherwise allowed pursuant to federal law.

D. For the purposes of this section:

(1) "cost sharing" means policy deductibles, copayments or coinsurance;

(2) "preventive care" means screening, testing, examination or counseling and the administration, dispensing or prescribing of drugs, devices or supplies incidental to the prevention of a sexually transmitted infection;

(3) "sexually transmitted infection" means chlamydia, syphilis, gonorrhea, HIV and relevant types of hepatitis, as well as any other sexually transmitted infection regardless of mode of transportation, as designated by rule upon making a finding that the particular sexually transmitted infection is contagious; and

(4) "treatment" means medically necessary care for the management of an existing sexually transmitted infection.

History: Laws 2023, ch. 99, § 1.

13-7-30. Definitions.

As used in Sections 1 through 9 [13-7-30 to 13-7-38 NMSA 1978] of this 2023 act:

A. "generally recognized standards" means standards of care and clinical practice established by evidence-based sources, including clinical practice guidelines and recommendations from mental health and substance use disorder care provider professional associations and relevant federal government agencies, that are generally recognized by providers practicing in relevant clinical specialties, including:

(1) psychiatry;

(2) psychology;

(3) social work;

(4) clinical counseling;

(5) addiction medicine and counseling; or

(6) family and marriage counseling; and

B. "mental health or substance use disorder services" means:

(1) professional services, including inpatient and outpatient services and prescription drugs, provided in accordance with generally recognized standards of care for the identification, prevention, treatment, minimization of progression, habilitation and rehabilitation of conditions or disorders listed in the current edition of the American psychiatric association's Diagnostic and Statistical Manual of Mental Disorders, including substance use disorder; or

(2) professional talk therapy services, provided in accordance with generally recognized standards of care, provided by a marriage and family therapist licensed pursuant to the Counseling and Therapy Practice Act [Chapter 61, Article 9A NMSA 1978].

History: Laws 2023, ch. 114, § 1.

13-7-31. Benefits required.

Group coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage for all mental health or substance use disorder services required by generally recognized standards of care.

History: Laws 2023, ch. 114, § 2.

13-7-32. Parity for coverage of mental health and substance use disorder services.

A. The office of superintendent of insurance shall ensure that an insurer complies with federal and state laws, rules and regulations applicable to coverage for mental health or substance use disorder services.

B. An insurer shall not impose quantitative treatment limitations, financial restrictions, limitations or requirements on the provision of mental health or substance use disorder services that are more restrictive than the predominant restrictions, limitations or requirements that are imposed on substantially all of the coverage of benefits for other conditions.

C. An insurer shall not impose non-quantitative treatment limitations for the treatment of mental health or substance use disorders or conditions unless factors, including the processes, strategies or evidentiary standards used in applying the non-quantitative treatment limitation, as written and in operation, are comparable to and are

applied no more restrictively than the factors used in applying the limitation to medical or surgical benefits in the classification.

History: Laws 2023, ch. 114, § 3.

13-7-33. Provider network adequacy.

A. An insurer shall maintain an adequate provider network to provide mental health and substance use disorder services.

B. The superintendent of insurance shall ensure access to mental health and substance use disorder services providers, including parity with medical and surgical services provider access, through regulation and review of claims processing, provider reimbursement procedures, network adequacy and provider reimbursement rate adequacy.

C. An insurer shall ensure that the process by which reimbursement rates for mental health and substance use disorder services are determined is comparable to and no more stringent than the process for reimbursement of medical or surgical benefits. In developing provider reimbursement rates, an insurer shall demonstrate that it has performed a comparability analysis of provider:

(1) reimbursement rates in surrounding states;

(2) reimbursement rates between mental health and substance use disorder providers and medical or surgical providers; and

(3) credentialing processes for mental health and substance use disorder providers and medical or surgical providers.

D. An insurer shall undertake all efforts, including increasing provider reimbursement rates through the processes and strategies described in Subsection C of this section, to ensure state-mandated network adequacy for the provision of mental health or substance use disorder services.

E. When in-network access to mental health or substance use disorder services is not reasonably available, an insurer shall provide access to out-of-network services with the same cost-sharing obligations to the insured as those required for in-network services.

History: Laws 2023, ch. 114, § 4.

13-7-34. Utilization review of mental health or substance use disorder services.

A. An insurer shall, at least monthly, review and update the insurer's utilization review process to reflect the most recent evidence and generally recognized standards of care.

B. When performing a utilization review of mental health or substance use disorder services, including level of care placement, continued stay, transfer and discharge, an insurer shall apply criteria in accordance with generally recognized standards of care.

C. An insurer shall provide utilization review training to staff and contractors undertaking activities related to utilization review.

D. An insurer shall:

(1) develop utilization review policies regarding quantitative and non-quantitative limitations for mental health and substance use disorder services coverage that are no more restrictive than the utilization review policies regarding quantitative and non-quantitative limitations for medical and surgical care; and

(2) make utilization review policies available to providers or plan members.

History: Laws 2023, ch. 114, § 5.

13-7-35. Prohibited exclusions of coverage for mental health or substance use disorder services.

An insurer shall not exclude provider prescribed coverage for mental health or substance use disorder services otherwise included in its coverage when:

A. it is available pursuant to federal or state law for individuals with disabilities;

B. it is otherwise ordered by a court or administrative agency;

C. it is available to an insured through a public benefit program; or

D. an insured has a concurrent diagnosis.

History: Laws 2023, ch. 114, § 6.

13-7-36. Level of care determinations for the provision of mental health or substance use disorder services.

A. An insurer shall provide coverage for all in-network mental health or substance use disorder services, consistent with generally recognized standards of care, including placing an insured into a medically necessary level of care.

B. Changes in level and duration of care shall be determined by the insured's provider in consultation with the insurer.

C. Level of care determinations shall include placement of an insured into a facility that provides detoxification services, a hospital, an inpatient rehabilitation treatment facility or an outpatient treatment program.

D. Level of care services for an insured with a mental health or substance use disorder shall be based on the mental health or substance use disorder needs of the insured rather than arbitrary time limits.

History: Laws 2023, ch. 114, § 7.

13-7-37. Coordination of care.

An insurer may facilitate communication between mental health or substance use disorder services providers and the insured's designated primary care provider to ensure coordination of care to prevent any conflicts of care that could be harmful to the insured.

History: Laws 2023, ch. 114, § 8.

13-7-38. Confidentiality provisions.

An insurer shall protect the confidentiality of an insured receiving mental health or substance use disorder services.

History: Laws 2023, ch. 114, § 9.

13-7-39. Exceptions.

The provisions of Sections 1 through 9 [13-7-30 to 13-7-38 NMSA 1978] of this 2023 act do not apply to short-term plans subject to the Short-Term Health Plan and Excepted Benefit Act [Chapter 59A, Article 23G NMSA 1978].

History: Laws 2023, ch. 114, § 10.

13-7-40. Biomarker testing insurer coverage.

A. Group health coverage, including self-insurance, offered, issued, amended, delivered or renewed under the Health Care Purchasing Act shall provide coverage for insureds to receive biomarker testing.

B. Coverage provided pursuant to this section shall be for the purposes of diagnosis, treatment, appropriate management or ongoing monitoring of an insured's

disease or condition when the test is supported by medical and scientific evidence, including:

(1) labeled indications for a United States food and drug administration-approved or -cleared test;

(2) indicated tests for a United States food and drug administration-approved drug;

(3) warnings and precautions on United States food and drug administration labels;

(4) federal centers for medicare and medicaid services national coverage determinations or medicare administrative contractor local coverage determinations; or

(5) nationally recognized clinical practice guidelines.

C. An insurer providing coverage for biomarker testing pursuant to this section shall ensure that:

(1) coverage is provided in a manner that limits disruptions in care, including coverage for multiple biopsies or biospecimen samples; and

(2) a patient and a practitioner who prescribes biomarker testing have clear, accessible and convenient processes to request an appeal of a benefit denial by the insurer and that those processes are accessible on the insurer's website.

D. Coverage for biomarker testing may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same group health care coverage, including any form of self-insurance.

E. The provisions of this section do not apply to accident-only or limited or specified disease policies, plans or certificates of health insurance.

F. As used in this section:

(1) "biomarker" means a characteristic that is objectively measured and evaluated as an indicator of normal biological processes, pathogenic processes or pharmacologic responses to a specific therapeutic intervention, including known gene-drug interactions for medications being considered for use or already being administered. "Biomarker" includes gene mutations, characteristics of genes or protein expression;

(2) "biomarker testing" means analysis of a patient's tissue, blood or other biospecimen for the presence of a biomarker and includes single-analyte tests, multi-

plex panel tests, protein expression and whole exome, whole genome and whole transcriptome sequencing; and

(3) "nationally recognized clinical practice guidelines" means evidence-based clinical practice guidelines that are:

(a) developed by independent organizations or medical professional societies using a transparent methodology and reporting structure and with a conflict-of-interest policy; and

(b) used to establish standards of care informed by a systematic review of evidence and an assessment of the benefits and risks of alternative care options and include recommendations intended to optimize patient care.

History: Laws 2023, ch. 138, § 1.

13-7-41. Dental coverage; prior authorization.

A. For purposes of this section, "prior authorization" means a written communication indicating whether a specific service is covered or multiple services are covered and reimbursable at a specific amount, subject to applicable coinsurance and deductibles, and issued in response to a request submitted by a provider using a format prescribed by a dental plan.

B. Group coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers a dental plan shall provide a prior authorization upon the submission of a properly formatted request from the insured.

C. Group coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers a dental plan shall not deny any claim subsequently submitted for services included in a prior authorization unless one of the following circumstances applies for each service denied:

(1) benefit limitations, including annual maximums or frequency limitations, not applicable at the time of the prior authorization, are reached due to the insured's utilization subsequent to issuance of the prior authorization;

(2) the documentation submitted for the claim clearly fails to support the claim as originally authorized;

(3) subsequent to the issuance of a prior authorization, new services are provided to the insured or a change in the insured's condition occurs that would cause prior-authorized services to no longer be medically necessary, based on prevailing standards of care;

(4) subsequent to the issuance of a prior authorization, new services are provided to the insured or a change in the insured's condition occurs such that the prior-authorized procedure would at that time require disapproval pursuant to the terms and conditions for coverage under the insured's plan in effect at the time the request for prior authorizations was made; or

(5) denial of the claim was due to one of the following reasons:

(a) another entity is responsible for payment;

(b) the provider has already been paid for the services identified on the claim;

(c) the claim submitted was fraudulent;

(d) the prior authorization was based on erroneous information provided to the dental plan by the provider, the insured or other person; or

(e) the insured was not eligible for the service on the date it was provided and the provider did not know, or with the exercise of reasonable care, could not have known the insured's eligibility status.

History: Laws 2023, ch. 169, § 1.

13-7-42. Dental coverage; designation of payment.

A. Group coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers a dental plan shall provide for the direct payment of covered benefits to a provider, specified by the insured, regardless of the provider's network or contractual status with the dental plan.

B. A dental plan shall provide for the direct payment of covered benefits to a provider, specified by the insured, by including on its claim forms an:

(1) option for the designation of payment from the insured to the provider; and

(2) an attestation to be completed by the insured.

History: Laws 2023, ch. 169, § 2.

13-7-43. Dental coverage; erroneously paid claims; restrictions on recovery.

A. Group coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers a dental plan shall establish policies and procedures for payment recovery, including providing:

(1) notice to the provider that identifies the error made in the processing or payment of the claim;

(2) an explanation of the recovery being sought; and

(3) an opportunity for the provider to appeal the recovery being sought as set forth in Subsection C of this section.

B. Group coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers a dental plan shall not initiate payment recovery procedures more than twenty-four months after the original payment for a claim was made unless the claim was fraudulent or intentionally misrepresented.

C. Group coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers a dental plan shall not attempt to recover an erroneously paid claim by withholding or reducing payment for a different claim unless the plan:

(1) notifies the provider, in writing, within twelve months of the erroneously paid claim; and

(2) advises the provider that an automatic deduction shall occur within forty-five days of receiving notification unless the provider submits a written appeal to the plan pursuant to the grievance rules prescribed by the superintendent of insurance.

D. The provisions of this section shall not apply to duplicate payments.

History: Laws 2023, ch. 169, § 3.

13-7-44. Dental coverage; methods of payment.

A. For purposes of this section, "credit card payment" means a type of electronic funds transfer whereby:

(1) an insurer issues a single-use series of numbers associated with the payment of services rendered by the provider and chargeable to a predetermined amount; and

(2) the provider is responsible for processing the payment by using a credit card terminal or internet portal.

B. Group coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that offers a dental plan shall not place restrictions on a provider regarding acceptable methods of payment, including designating credit card payments as the only acceptable form of payment.

C. When transmitting a payment to a provider using an electronic funds transfer, other than one made through the automated clearinghouse network, an insurer:

(1) shall not charge a fee to the provider solely to transmit a payment without the provider's consent;

(2) shall notify the provider of any other fees associated with transmitting a payment; and

(3) shall provide a provider with a fee-free method of transmitting a payment and provide instructions for utilizing the method.

History: Laws 2023, ch. 169, § 4.

13-7-45. Dental coverage; provider network leasing.

A. For purposes of this section:

(1) "contracting entity" means any person or entity that enters into direct contracts with a provider for the delivery of services in the ordinary course of business;

(2) "provider" means a person acting within the scope of licensure to provide dental services or supplies;

(3) "provider network contract" means a contract between a contracting entity and a provider specifying the rights and responsibilities of the contracting entity and providing for the delivery of and payment for services to the insured; and

(4) "third party" means a person or entity that enters into a contract with a contracting entity or with another third party to gain access to the services or contractual discounts of a provider network contract.

B. At a time when a contract relevant to granting access to a provider network to a third party is entered into or renewed, or when there are material modifications made, a contracting entity shall not require a provider to participate in third-party access to the provider network contract or contract directly with a third party that acquired the provider network. If a provider opts out, the contracting entity shall not cancel or otherwise end a contractual relationship with the provider. When initially contracting with a provider, a contracting entity must accept a qualified provider even if the provider rejects a network lease provision.

C. A contracting entity shall not grant a third party access to a provider network contract, a provider's services or discounts provided pursuant to a provider network contract unless:

(1) the provider network contract states that the contracting entity may enter into an agreement with a third party, allowing the third party to obtain the insurer's rights and responsibilities as though the third party were the contracting entity;

(2) the third party accessing the provider network contract agrees to comply with all of the terms of the provider network contract; and

(3) the contracting entity:

(a) identifies all third parties with which it contracts in a list on its website that is updated every ninety days;

(b) notifies a provider that a new third party is planning to lease or purchase the provider network contract, at least thirty business days before the lease or purchase takes effect;

(c) requires the third party to identify the source of the discount on all remittances or explanation of benefits under which the discount is taken; and

(d) makes available a copy of the provider network contract relied upon in the adjudication of a claim to a provider within thirty days of the provider's request.

D. A third party's right to a provider's discounted rate shall cease upon the termination date of the provider network contract.

E. The provisions of this section shall not apply if access to a provider network contract is granted to a dental carrier of an entity operating in accordance with the same brand licensee program as the contracting entity or to an entity that is an affiliate of the contracting entity. A list of the contracting entity's affiliates shall be made available to a provider on the contracting entity's website.

History: Laws 2023, ch. 169, § 5.

13-7-46. Prosthetic devices; custom orthotic devices; minimum coverage.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage for prosthetics and custom orthotics that is at least equivalent to that coverage currently provided by the federal medicare program and no less favorable than the terms and conditions that the group health plan offers for medical and surgical benefits.

B. A group health plan shall cover the most appropriate prosthetic or custom orthotic device determined to be medically necessary by the enrollee's treating physician and associated medical providers to restore or maintain the ability to complete activities of daily living or essential job-related activities and that is not solely for the

comfort or convenience of the enrollee. This coverage shall include all services and supplies necessary for the effective use of a prosthetic or custom orthotic device, including:

(1) formulation of its design, fabrication, material and component selection, measurements, fittings and static and dynamic alignments;

(2) all materials and components necessary to use it;

(3) instructing the enrollee in the use of it; and

(4) the repair and replacement of it.

C. A group heath plan shall cover a prosthetic or custom orthotic device determined by the enrollee's provider to be the most appropriate model that meets the medical needs of the enrollee for performing physical activities, including running, biking and swimming and to maximize the enrollee's upper limb function. This coverage shall include all services and supplies necessary for the effective use of a prosthetic or custom orthotic device, including:

(1) formulation of its design, fabrication, material and component selection, measurements, fittings and static and dynamic alignments;

(2) all materials and components necessary to use it;

(3) instructing the enrollee in the use of it; and

(4) the repair and replacement of it.

D. A group health plan's reimbursement rate for prosthetic and custom orthotic devices shall be at least equivalent to that currently provided by the federal medicare program and no more restrictive than other coverage under the group health plan.

E. Prosthetic and custom orthotic device coverage shall be comparable to coverage for other medical and surgical benefits under the group health plan, including restorative internal devices such as internal prosthetic devices, and shall not be subject to spending limits or lifetime restrictions.

F. Prosthetic and custom orthotic device coverage shall not be subject to separate financial requirements that are applicable only with respect to that coverage. A group health plan may impose cost sharing on prosthetic or custom orthotic devices; provided that any cost-sharing requirements shall not be more restrictive than the cost-sharing requirements applicable to the plan's medical and surgical benefits, including those for internal devices.

G. A group health plan may limit the coverage for, or alter the cost-sharing requirements for, out-of-network coverage of prosthetic and custom orthotic devices; provided that the restrictions and cost-sharing requirements applicable to prosthetic or custom orthotic devices shall not be more restrictive than the restrictions and requirements applicable to the out-of-network coverage for a group health plan's medical and surgical coverage.

H. In the event that medically necessary covered orthotics and prosthetics are not available from an in-network provider, the insurer shall provide processes to refer a member to an out-of-network provider and shall fully reimburse the out-of-network provider at a mutually agreed upon rate less member cost sharing determined on an in-network basis.

I. A group health plan shall not impose any annual or lifetime dollar maximum on coverage for prosthetic or custom orthotic devices, other than an annual or lifetime dollar maximum that applies in the aggregate to all terms and services covered under the group health plan.

J. If coverage is provided through a managed care plan, an enrollee shall have access to medically necessary clinical care and to prosthetic and custom orthotic devices and technology from not less than two distinct prosthetic and custom orthotic providers in the managed care plan's provider network located in the state.

K. Coverage for prosthetic and custom orthotic devices shall be considered habilitative or rehabilitative benefits for purposes of any state or federal requirement for coverage of essential health benefits, including habilitative and rehabilitative benefits.

L. If coverage for prosthetic or custom orthotic devices is provided, payment shall be made for the replacement of a prosthetic or custom orthotic device or for the replacement of any part of such devices, without regard to continuous use or useful lifetime restrictions, if an ordering health care provider determines that the provision of a replacement device, or a replacement part of such a device, is necessary because of any of the following:

(1) a change in the physiological condition of the patient;

(2) an irreparable change in the condition of the device or in a part of the device; or

(3) the condition of the device, or the part of the device, requires repairs and the cost of such repairs would be more than sixty percent of the cost of a replacement device or of the part being replaced.

M. Confirmation from a prescribing health care provider may be required if the prosthetic or custom orthotic device or part being replaced is less than three years old.

N. A group health plan subject to the Health Care Purchasing Act shall not discriminate against individuals based on disability, including limb loss, absence or malformation.

History: Laws 2023, ch. 196, § 1.

13-7-47. Calculating an enrollee's cost-sharing obligation for prescription drug coverage.

A. When calculating an enrollee's cost-sharing obligation for covered prescription drugs, pursuant to group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act, the insurer shall credit the enrollee for the full value of any discounts provided or payments made by third parties at the time of the prescription drug claim.

B. Beginning on or after January 1, 2024, an insurer shall not charge a different cost-sharing amount for:

(1) prescription drugs or pharmacy services obtained at a non-affiliated pharmacy; or

(2) administration of prescription drugs at different infusion sites; provided that an insurer may communicate with an insured regarding lower-cost sites of service.

C. Beginning on or after January 1, 2024, an insurer shall not require an insured to make a payment at the point of sale for a covered prescription drug in an amount greater than the least of the:

(1) applicable cost-sharing amount for the prescription drug;

(2) amount an insured would pay for the prescription drug if the insured purchased the prescription drug without using a health benefits plan or any other source of prescription drug benefits or discounts;

(3) total amount the pharmacy will be reimbursed for the prescription drug from the insurer, including the cost-sharing amount paid by an insurer; or

(4) value of the rebate from the manufacturer provided to the insurer or its pharmacy benefits manager for the prescribed drug.

D. Beginning on or after January 1, 2024, if a prescription drug rebate is more than the amount needed to reduce the insured's copayment to zero on a particular drug, the remainder shall be credited to the insurer.

E. Beginning on or after January 1, 2024, any rebate amount shall be counted toward the insured's out-of-pocket prescription drug costs.

F. For purposes of this section, "cost sharing" means any:

(1) copayment;

(2) coinsurance;

(3) deductible;

(4) out-of-pocket maximum amount;

(5) other financial obligation, other than a premium or share of a premium; or

(6) combination thereof.

G. The provisions of this section do not apply to excepted benefit plans as provided pursuant to the Short-Term Health Plan and Excepted Benefit Act [Chapter 59A, Article 23G NMSA 1978], catastrophic plans, tax-favored plans or high-deductible health plans with health savings accounts until an eligible insured's deductible has been met, unless otherwise allowed pursuant to federal law.

History: Laws 2023, ch. 206, § 1.

ARTICLE 8
Public Building Plaques

13-8-1. Public buildings; acknowledgment of taxpayers when elected officials acknowledged.

On every new public building plaque that lists, acknowledges or thanks the elected officials who were in office at the time the building was funded, constructed or renovated, there shall be included a statement of equal size and visibility that thanks the taxpayers of New Mexico for their contribution in funding the construction or renovation.

History: Laws 2001, ch. 85, § 1.