

**NEW MEXICO  
STATUTES  
1978**

---

**ANNOTATED**

---

**Chapter 13  
Public Purchases and Property**

---

**Pamphlet 29**



**2013 SUPPLEMENT**

This supplement includes laws enacted since the 2012 Replacement Pamphlet through the First Session of the Fifty-First Legislature (2013) and annotations through 2013-NMSC-017 and 2013-NMCA-059.

Cite

the New Mexico Statutes Annotated

by chapter, article, and section:

**Section (or §) - - NMSA 1978**

COPYRIGHT © 2013

BY

THE STATE OF NEW MEXICO

---

All rights reserved.

ISBN 1-936378-64-7 (volume)

ISBN 1-936378-60-4 (set)

## CHAPTER 13

# Public Purchases and Property

### Art.

1. Procurement, 13-1-1 to 13-1-199.
- 4A. Art in Public Places, 13-4A-1 to 13-4A-11.
6. Sale of Public Property, 13-6-1 to 13-6-8.
7. Health Care Purchasing, 13-7-1 to 13-7-16.

## ARTICLE 1

### Procurement

#### Sec.

- 13-1-37. Definition; central purchasing office.
- 13-1-38.1. Definition; chief procurement officer.
- 13-1-70.1. Definition; person.
- 13-1-95. Purchasing division; creation; director is state purchasing agent; appointment; duties.
- 13-1-95.2. Chief procurement officers; reporting requirement; training; certification.
- 13-1-97. Centralization of procurement authority.
- 13-1-97.2. Competitive sealed bids and proposals; record maintenance.
- 13-1-98. Exemptions from the Procurement Code.
- 13-1-119.1. Public works project delivery system; design and build projects authorized.
- 13-1-121. Competitive sealed qualifications-based proposals; architects; engineers; landscape architects; surveyors; selection committee; state public works projects.
- 13-1-125. Small purchases.
- 13-1-126. Sole source procurement.
- 13-1-126.1. Sole source contracts; notice; protest.
- 13-1-127. Emergency procurements.

#### Sec.

- 13-1-128. Sole source and emergency procurements; publication of award to agency web site and sunshine portal; content and submission of record.
- 13-1-152.1. Water storage tank service contracts.
- 13-1-154.1. Multiple source contracts; architectural and engineering services contracts; indefinite quantity construction contracts.
- 13-1-156.1. Trade, exchange or disposal of tangible personal property; state-owned railroad.
- 13-1-177. Authority to suspend or debar.
- 13-1-178. Causes for debarment or suspension; time limit.
- 13-1-180. Debarment or suspension; notice of determination.
- 13-1-180.1. Continuation of current contracts; restrictions on subcontracting.
- 13-1-188. Public acquisition of American-made motor vehicles required.
- 13-1-199. Penalties.

#### 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.

The 2013 amendment, effective July 1, 2013, removed the state purchasing officer from the central

purchasing office; in the first sentence, after "that office", deleted "or officer" and in the second sentence, after "services department", deleted "and the state purchasing agent".

#### 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.

Effective dates. — Laws 2013, ch. 70, § 8 made Laws 2013, ch. 70, § 1 effective July 1, 2013.

#### 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.

Effective dates. — Laws 2013, ch. 41 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

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

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.

The 2013 amendment, effective July 1, 2013, authorized the state purchasing agent to procure price agreements for governmental entities that do not have a chief procurement officer; in Subsection B, in the first

sentence, after "administrator", deleted "chief executive" and added "director"; in Paragraph (1) of Subsection D, after "procurement", deleted "regulations" and added "rules"; and in Subsection E, added the last sentence.

### **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.

**Effective dates.** — Laws 2013, ch. 70, § 8 made Laws 2013, ch. 70, § 3 effective July 1, 2013.

### 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.

The 2013 amendment, effective July 1, 2013, permitted the chief procurement officers to act for state agencies that are excluded from the requirement of procurement through the state purchasing agent; required local public bodies to identify their central pur-

chasing office and report their chief procurement officer to the state purchasing agent; in Subsection B, after "central purchasing office", deleted "designate by statute, the governing authority of that state agency" and added "the chief procurement officer"; and in Subsection C, added the last sentence.

### 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.

**Effective dates.** — Laws 2013, ch. 40 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

### 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 and training materials in printed or electronic format from the publishers or copyright holders thereof;
- 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 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 through 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;

FF. procurement by or through the children, youth and families department of pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act [32A-23-1 through 32A-23-9 NMSA 1978]; and

GG. 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.

**2013 Multiple Amendments.** — Laws 2013, ch. 40, § 1, effective June 14, 2013, Laws 2013, ch. 70, § 6, effective July 1, 2013 and Laws 2013, ch. 71, § 1, effective June 14, 2013, enacted different amendments to this section. Pursuant to 12-1-8 NMSA 1978, Laws 2013, ch. 71, § 1, which was last signed by the governor, is set out above and incorporates all three amendments. Laws 2013, ch. 40, § 1 added Subsection FF to exempt procurements that are exempt under other law; Laws 2013, ch. 70, § 6 exempted purchases of training material and legal subscriptions and research services and increased the dollar amount of purchases of magazine subscriptions, web-based or electronic subscriptions and conference registration fees that are exempt; and Laws 2013, ch. 71, § 1 added Subsection FF to exempt procurement through the children, youth and families department and the public education department of services pursuant

to the Pre-Kindergarten Act. To view the session laws in their entirety, see the 2013 session laws on [NMONESOURCE.COM](http://NMONESOURCE.COM).

Laws 2013, ch. 71, § 1, effective June 14, 2013, exempted procurement through the children, youth and families department and the public education department of services pursuant to the Pre-Kindergarten Act; and added Subsection FF.

Laws 2013, ch. 70, § 6, effective July 1, 2013, exempted purchases of training material and legal subscriptions and research services and increased the dollar amount of purchases of magazine subscriptions, web-based or electronic subscriptions and conference registration fees that are exempt; and in Subsection E, added "and training materials in printed or electronic format"; in Subsection J, at the beginning of the sentence, deleted "minor", changed "five thousand dollars (\$5,000)" to "ten thousand dollars (\$10,000)" and added "web-based or electronic subscriptions"; in Subsection R, added "legal subscription and research services and"; and in Subsection EE, after "Crime Act" added "of 1984".

Laws 2013, ch. 40, § 1, effective June 14, 2013, exempted from the Procurement Code procurements that are exempt under other law; in Subsection EE, after "Crime Act" added "of 1984"; and added Subsection FF.

### 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 Sec-

tions 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.

The 2013 amendment, effective June 14, 2013, removed the ten million dollar minimum on design and build projects; in Subsection A, in the introductory paragraph, in the first sentence, after "the system on

a specific project", deleted "with a maximum allowable construction cost of more than ten million dollars (\$10,000,000)"; and in Subsection F, in the introductory sentence, after "Subsections C and D of this section", deleted "and the minimum construction cost requirement of Subsection A of this section".

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

A. The "architect, engineer, landscape architect and surveyor selection committee" is created. The committee, which shall serve as the selection committee for state public works projects, except for highway projects of the department of transportation, is composed of 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, who shall be chair;

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

(4) one member designated by the secretary.

B. 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.

C. 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 through 10-8-8 NMSA 1978].

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

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

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities man-



agement division; in Paragraph (2) of Subsection A and in Subsections B and C, deleted "property control" and added "facilities management" before "division"; in Subsections A and D, changed "state highway and

transportation department" to "department of transportation"; and in Paragraph (3) of Subsection A, after "designated by the", deleted "architect-engineer-landscape architect".

### 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 department of finance and administration, 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.

The 2013 amendment, effective July 1, 2013, increased the dollar amount of small purchases; in Subsection A, after "not exceeding", deleted "twenty thousand dollars (\$20,000)" and added "sixty thousand dollars (\$60,000), excluding applicable state and local gross receipts taxes", after "applicable small purchase", deleted "regulation" and added "rules",

and after "authority to issue", deleted "regulation" and added "rules"; in Subsection B, after "not exceeding", deleted "fifty thousand dollars (\$50,000)" and added "sixty thousand dollars (\$60,000)", after "professional services procurement", deleted "regulation" and added "rules", and after "authority to issue", deleted "regulation" and added "rules"; and in Subsection C, after "not exceeding", deleted "ten thousand dollars (\$10,000)" and added "twenty thousand dollars (\$20,000), excluding applicable state and local gross receipts taxes".

### 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.

The 2013 amendment, effective June 14, 2013, added additional criteria and changed the procedures for sole source procurement; in Subsection A, after

"central purchasing office", deleted "makes a determination, after conducting a good faith review of available sources and consulting the using agency"

and added "determines, in writing"; added Paragraphs (2) and (3) of Subsection A; and added Subsections B and E.

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

A. At least thirty days before a sole source contract is awarded, the state purchasing agent, a central purchasing office or a designee of either shall post notice of the intent to award a sole source contract on its web site. If a central purchasing office does not maintain a web site, it shall post the notice on the state purchasing agent's web site. 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 who was not awarded a sole source contract may protest to the state purchasing agent or a central purchasing office. The protest shall be submitted in writing within fifteen calendar days of the notice of intent to award a contract being posted by the state purchasing agent or a central purchasing office.

**History:** Laws 2013, ch. 40, § 6.

**Effective dates.** — Laws 2013, ch. 40 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

### 13-1-127. Emergency procurements.

A. The state purchasing agent or a central purchasing office may make emergency procurements when there exists a threat to public health, welfare, safety or property requiring procurement under emergency conditions; provided that emergency procurements shall be made with competition as is practicable under the circumstances.

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

- (1) the functioning of government;
- (2) the preservation or protection of property; or
- (3) the health or safety of any person.

C. Emergency procurements shall not include the purchase or lease purchase of heavy road equipment.

D. The state purchasing agent or a central purchasing office shall use due diligence in determining the basis for the emergency procurement and for the selection of the particular contractor. The determination shall be in writing and included in the procurement file.

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

**History:** Laws 1984, ch. 65, § 100; 1987, ch. 348, § 10; 2002, ch. 84, § 1; 2013, ch. 40, § 3.

The 2013 amendment, effective June 14, 2013, changed the procedures for an emergency procurement; in Subsection A, after "central purchasing office", deleted "or a designee or either", after "purchasing office may make", deleted "or authorize others

to make", and deleted the former second sentence which required a written determination of the basis for an emergency procurement and the selection of a contractor and prohibited the emergency procurement of heavy road equipment; and added Subsections C and D.

### 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.

The 2013 amendment, effective June 14, 2013, required the publication of information about a sole source procurement prior to the award of a contract; required the publication of information about an

emergency procurement after the award of a contract; in the title of the section, added "publication of award to agency web site and sunshine portal"; added Subsections A through D; and added Paragraph (4) of Subsection E.

### **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.

**Effective dates.** — Laws 2013, ch. 164, § 2 provided that Laws 2013, ch. 164, § 1 was effective July 1, 2013.

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

A. A state agency 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 two million

dollars (\$2,000,000) over four years and that a single contract, including any renewals, does not exceed five hundred thousand dollars (\$500,000).

B. A state agency 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 two million dollars (\$2,000,000) over four years and the contract provides that any one purchase order under the contract may not exceed five hundred thousand dollars (\$500,000).

C. A state agency 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;

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

(4) a contract to be awarded pursuant to this section to a firm that is currently performing under a contract issued pursuant to this section will not cause the total amount of all contracts issued pursuant to this section to that firm to exceed two million dollars (\$2,000,000) in any four-year period for architectural, engineering or construction services; and

(5) the procurement is subject to the limitations of Sections 13-1-150 through 13-1-154 NMSA 1978.

**History:** Laws 2007, ch. 312, § 1; 2013, ch. 99, § 1.

The 2013 amendment, effective July 1, 2013, increased the dollar amount limit of multiple source contracts for procurement of architectural and engineering services; in the title, after "architectural and", deleted "design services", and added "engineering services"; in Subsection A, after "engineering", deleted "design service" and added "services", after "total amount of", deleted "a contract" and added "multiple contracts", after "all renewals", added "for a single contractor", after "does not exceed", deleted "two hundred thousand dollars (\$200,000)" and added

"two million dollars (\$2,000,000)", and after "over four years", added "and that a single contract, including any renewals, does not exceed five hundred thousand dollars (\$500,000)"; in Paragraph (3) of Subsection C, after "multiple contracts for", deleted "professional design" and added "architectural or engineering"; and in Paragraph (4) of Subsection C, in the introductory sentence, after "a contract", deleted "shall not" and added "to" and after "pursuant to this section", deleted "if", and added "will not cause", deleted Subparagraph (a) which provided for a limit of two hundred thousand dollars, and in Subparagraph (b), after "four-year period for", added "architectural, engineering or".

### 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.

**Effective dates.** — Laws 2013, ch. 149 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

### 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.

The 2013 amendment, effective June 14, 2013, authorized suspension based on charges of civil violations and criminal offenses that are causes for debarment; provided the periods of suspension based on charges of civil violations and criminal offenses; added Subsections A and B; in the first sentence of

Subsection C, deleted "business" and added "person", in the second sentence, after "three years", deleted "and a suspension shall not exceed three months", and in the third sentence, after "authority to debar", deleted "or suspend", after "in accordance with", deleted "regulations which" and added "rules that", and after "hearing prior to", deleted "suspension or"; and added Subsection D.

### 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.

The 2013 amendment, effective June 14, 2013, added additional causes for debarment or suspension; in Subsection A, in the introductory sentence, after "within three years of", added "the date final action on" and after "action on a procurement", added "is taken"; in Paragraph (1) of Subsection A, at the beginning of the sentence, added "criminal", after "related to obtaining", added "unlawfully", after "subcontract, or", deleted "in" and added "related to", and after "related to the", added "unlawful"; added Paragraph (2) of Subsection A; in Paragraph (3) of Subsection A, after "federal statutes", deleted "of" and added "related to", after "bribery", added "fraud", after "destruction

of records", deleted "or" and added "making false statements or" and after "receiving stolen property", added "or for violation of federal or state tax laws"; in Paragraph (4) of Subsection A, after "antitrust statutes", deleted "arising out of" and added "related to" and after "submission of", deleted "bids or proposals" and added "offers"; added Paragraphs (5) through (7) of Subsection A; in Subparagraph (a) of Paragraph (8) of Subsection A, after "one or more contracts", deleted "provided that this failure has occurred within a reasonable time preceding the decision to impose debarment"; in Paragraph (9) of Subsection A, after "any other cause", deleted "occurring within three years of a procurement"; and added Subsection B.

**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.

The 2013 amendment, effective June 14, 2013, authorized notice of debarment or suspension to be sent by mail or electronic transmission; in the introductory sentence, after "determination", deleted "under"

and added "made pursuant to", after "Section", deleted "152 of the Procurement Code" and added "13-1-179 NMSA 1978" and after "shall", deleted "immediately be mailed to the debarred or suspended business" and added "be"; and added Subsections A and B.

**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.  
**Effective dates.** — Laws 2013, ch. 41 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

### 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.

The 2013 amendment, effective June 14, 2013, exempted motorcycles used for law enforcement pur-

poses; and in the first sentence, after "vehicles are assembled in North America", added ", provided that this section shall not apply to motor vehicles used for law enforcement purposes".

### 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.

The 2013 amendment, effective June 14, 2013, increased the penalties for violations of the Procurement Code; in the title, deleted "Misdemeanor" and

added "Penalties"; in the introductory sentence, after "person", added "that willfully"; in Subsection A, after "misdemeanor", added the remainder of the sentence; and added Subsection B.

## ARTICLE 4A

### Art in Public Places

Sec.  
 13-4A-3. Definitions.

#### 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, "pub-

lic 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.

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; in Subsection E, deleted "property control" and added "facilities management" before

"division"; in Subsections D and E, changed "office of cultural affairs" to "cultural affairs department"; and in Subsection E, changed "state highway and transportation department" to "department of transportation" and changed "state department of public education" to "public education department".

## ARTICLE 6

### Sale of Public Property

Sec.

13-6-1. Disposition of obsolete, worn-out or unusable tangible personal 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.

The 2013 amendment, effective June 14, 2013, provided for the disposition of state-owned K-9 dogs and added Subsection L.

## ARTICLE 7

### Health Care Purchasing

Sec.  
13-7-14. Coverage for telemedicine services.  
13-7-15. Prescription drugs; prohibited formulary changes; notice requirements.

Sec.  
13-7-16. Coverage for autism spectrum disorder diagnosis and treatment; permissible limitations. (Effective January 1, 2015.)

#### 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 allow covered benefits to be provided through telemedicine services. Coverage for health care services provided through telemedicine shall be determined in a manner consistent with coverage for health care services provided through in-person consultation.

B. 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. Telemedicine used to provide clinical services shall be encrypted and shall conform to state and federal privacy laws.

G. 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.

H. 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 interactive simultaneous audio and video or store-and-forward technology using information and telecommunications technologies by a health care provider to deliver health care services at a site other than the site where the patient is located, including the use of electronic media for consultation relating to the health care diagnosis or treatment of the patient in real time or through the use of store-and-forward technology.

History: Laws 2013, ch. 105, § 1.

Effective dates. — Laws 2013, ch. 105 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

### 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 be 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.

Effective dates. — Laws 2013, ch. 138 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

***13-7-16. Coverage for autism spectrum disorder diagnosis and treatment; permissible limitations. (Effective January 1, 2015.)***

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage for an eligible individual who is nineteen years of age or younger, or an eligible individual who is twenty-two years of age or younger and is enrolled in high school, 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. 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.

D. 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.

E. 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, but are not limited to:

(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.

F. This section shall not be construed as limiting benefits and coverage otherwise available to an insured under group health coverage.

G. 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.

H. As used in this section:

(1) "autism spectrum disorder" means a condition that meets the diagnostic criteria for the pervasive developmental disorders published in the *Diagnostic and Statistical Manual of Mental Disorders, current edition*, published by the American psychiatric association, including autistic disorder; Asperger's disorder; pervasive development disorder not otherwise specified; Rett's disorder; and childhood disintegrative disorder;

(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.*

*Effective dates. — Laws 2013, ch. 185, § 2 made  
Laws 2013, ch. 185, § 1 effective January 1, 2015.*

0

0

0

