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HOUSE BILL 516

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Daniel P. Silva

AN ACT

RELATING TO THE PROCUREMENT OF PUBLIC PROPERTY; AMENDING THE
PROCUREMENT CODE TO PROVIDE THAT, UNDER CERTAIN CIRCUMSTANCES,
BIDS AND PROPOSALS MAY BE SUBMITTED ELECTRONICALLY AND TO
PROVIDE, IN CERTAIN CIRCUMSTANCES, FOR REVERSE AUCTION
PROCEDURES AS AN ALTERNATIVE TO SEALED BIDS; DECLARING AN
EMERGENCY.

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

Section 1. Section 13-1-28 NMSA 1978 (being Laws 1984,
Chapter 65, Section 1) is amended to read:

"13-1-28. SHORT TITLE.--Sections [~~1 through 172 of this
act]~~ 13-1-21 through 13-1-199 NMSA 1978 may be cited as the
"Procurement Code"."

Section 2. Section 13-1-64 NMSA 1978 (being Laws 1984,
Chapter 65, Section 37) is amended to read:

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1 "13-1-64. DEFINITION--INVITATION FOR BIDS.--"Invitation
2 for bids" means all documents, including those attached or
3 incorporated by reference, utilized for soliciting sealed or
4 reverse auction bids."

5 Section 3. Section 13-1-95.1 NMSA 1978 (being Laws 2001,
6 Chapter 292, Section 7) is amended to read:

7 "13-1-95.1. ELECTRONIC TRANSMISSIONS.--

8 A. The state purchasing agent shall [~~work with the~~
9 ~~attorney general to~~] develop guidelines for central purchasing
10 offices to use electronic media, including acceptance of sealed
11 bids and [~~requests for~~] competitive sealed proposals that
12 include electronic signatures. The guidelines shall include:

13 [~~A-~~] (1) appropriate security to prevent
14 unauthorized access to electronically submitted sealed bids or
15 proposals prior to the date and time set for opening of bids or
16 the deadline set for receipt for proposals, including the
17 electronic bidding, approval and award process; and

18 [~~B-~~] (2) accurate retrieval or conversion of
19 electronic forms of information into a medium that permits
20 inspection and copying.

21 B. A central purchasing office, in an invitation
22 for bids or a request for proposals, may require all or any
23 part of a sealed bid or a competitive sealed proposal to be
24 submitted electronically if the office determines that an
25 electronic submission will be advantageous to the procurement

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1 process. If electronic submission is required:

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

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

10 (3) for sealed bids, a representative of the
11 central purchasing office and a witness shall open the email
12 account immediately after the closing time, record the vendors
13 that submitted bids, the date and time submitted, the bids and
14 associated prices and prepare a bid tabulation of all
15 responsive vendors for review. The bids shall then be
16 evaluated and the contract awarded as required in the
17 invitation for bids and as otherwise provided in the
18 Procurement Code; and

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

23 Section 4. Section 13-1-102 NMSA 1978 (being Laws 1984,
24 Chapter 65, Section 75) is amended to read:

25 "13-1-102. COMPETITIVE SEALED BIDS REQUIRED.--All

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1 procurement shall be achieved by competitive sealed bid
2 pursuant to Sections [~~76 through 83 of the Procurement Code~~]
3 13-1-103 through 13-1-110 NMSA 1978, except procurement
4 achieved pursuant to the following sections of the Procurement
5 Code:

6 A. Sections [~~84 through 97~~] 13-1-111 through
7 13-1-122 NMSA 1978, competitive sealed proposals;

8 B. Section [~~98~~] 13-1-125 NMSA 1978, small
9 purchases;

10 C. Section [~~99~~] 13-1-126 NMSA 1978, sole source
11 procurement;

12 D. Section [~~100~~] 13-1-127 NMSA 1978, emergency
13 procurements;

14 E. Section [~~102~~] 13-1-129 NMSA 1978, existing
15 contracts; [~~and~~]

16 F. Section [~~103~~] 13-1-130 NMSA 1978, purchases from
17 anti-poverty program businesses; and

18 G. Section 13-1-110.1 NMSA 1978, reverse auction
19 bidding."

20 Section 5. Section 13-1-103 NMSA 1978 (being Laws 1984,
21 Chapter 65, Section 76) is amended to read:

22 "13-1-103. [~~COMPETITIVE SEALED BIDS~~] INVITATION FOR
23 BIDS.--

24 A. An invitation for bids shall be issued and shall
25 include the specifications for the services, construction or

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1 items of tangible personal property to be procured, all
2 contractual terms and conditions applicable to the procurement
3 and whether the procurement will be by sealed bid or by reverse
4 auction.

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

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

13 D. If the procurement is to be by reverse auction,
14 the invitation for bids shall comply with the requirements of
15 Section 13-1-110.1 NMSA 1978."

16 Section 6. Section 13-1-107 NMSA 1978 (being Laws 1984,
17 Chapter 65, Section 80) is amended to read:

18 "13-1-107. COMPETITIVE SEALED BIDS--BID OPENING.--Bids
19 submitted electronically shall be opened as provided in Section
20 13-1-95.1 NMSA 1978; otherwise, bids shall be opened publicly
21 in the presence of one or more witnesses at the time and place
22 designated in the invitation for bids. The amount of each bid
23 and each bid item, if appropriate, and such other relevant
24 information as may be specified by the state purchasing agent
25 or a central purchasing office, together with the name of each

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1 bidder, shall be recorded, and the record and each bid shall be
2 open to public inspection."

3 Section 7. A new section of the Procurement Code, Section
4 13-1-110.1 NMSA 1978, is enacted to read:

5 "13-1-110.1. [NEW MATERIAL] REVERSE AUCTION--PROCEDURE.--

6 A. A central purchasing office may use a reverse
7 auction, in lieu of competitive bidding, for the procurement of
8 goods and nonprofessional services when the central purchasing
9 office determines that the reverse auction would be
10 advantageous.

11 B. In addition to the information required by
12 Section 13-1-103 NMSA 1978, an invitation for bids using a
13 reverse auction shall designate both an opening date and time
14 and a closing date and time; provided that the closing date and
15 time need not be a fixed point in time, but may remain
16 dependent on variables specified in the invitation for bids.
17 In addition, an invitation for bids using a reverse auction may
18 require bidders to register before the opening date and time
19 and, as part of that registration, to agree to any terms,
20 conditions or other requirements set forth in the invitation.
21 Public notice of an invitation for bids using a reverse auction
22 shall be given in the same manner as provided for competitive
23 sealed bids in Section 13-1-104 NMSA 1978.

24 C. At the time specified in the invitation for
25 bids, the central purchasing office shall begin accepting real-

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1 time, online bids over the internet and shall continue to
2 accept such bids until the closing date and time. Following
3 receipt of the first bid after the opening date and time, all
4 bid prices shall be posted electronically to the internet and
5 updated on a real-time basis. During the bidding process, all
6 bidders' prices are public and shall be revealed online;
7 provided that bidders' names or other information that may
8 reveal a bidder's identity shall not be disclosed at any time
9 before the closing date and time. At any time before the
10 closing date and time, a bidder may lower, but not raise, the
11 price of its bid, if the lowered price is less than the then-
12 current low bid, and a bidder's lowest bid price supersedes all
13 prior higher bids from that bidder. Unless a bid is allowed to
14 be withdrawn pursuant to Subsection D of this section, all bids
15 are binding on the bidder; provided that a price entered in
16 error may be corrected by the bidder by complying with the time
17 frame and procedure for bid correction as specified in the
18 invitation for bids.

19 D. After the closing date and time, a bidder may
20 request, via an email message to the central purchasing office,
21 that its bid be withdrawn. Such a request may be allowed by
22 the central purchasing office only upon a written finding that
23 the bid was submitted or calculated by mistake. If the lowest
24 responsible bid is withdrawn pursuant to this subsection, the
25 central purchasing office may cancel the procurement, award the

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1 contract to the next highest bidder or reopen the real-time
2 online bidding process to all previous bidders by giving
3 notice, as specified in the invitation for bids, of both the
4 new opening date and time and the new closing date and time.

5 E. A contract solicited by a reverse auction
6 process shall be awarded pursuant to the procedure prescribed
7 for competitive sealed bids in Section 13-1-108 NMSA 1978.

8 F. The secretary shall adopt such rules as are
9 necessary to effectuate the provisions of this section."

10 Section 8. Section 13-1-112 NMSA 1978 (being Laws 1984,
11 Chapter 65, Section 85, as amended) is amended to read:

12 "13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR
13 PROPOSALS.--

14 A. Competitive sealed proposals, including
15 competitive qualifications-based proposals, shall be solicited
16 through a request for proposals which shall be issued and shall
17 include the specifications for the services or items of
18 tangible personal property to be procured, all contractual
19 terms and conditions applicable to the procurement, the
20 location where proposals are to be received and the date, time
21 and place where proposals are to be received and reviewed. A
22 request for proposals may, pursuant to Section 13-1-95.1 NMSA
23 1978, require that all or a portion of a responsive proposal be
24 submitted electronically.

25 B. In the case of requests for competitive

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1 qualifications-based proposals, price shall be determined by
2 formal negotiations related to scope of work."

3 Section 9. Section 13-1-119.1 NMSA 1978 (being Laws 1997,
4 Chapter 171, Section 5, as amended) is amended to read:

5 "13-1-119.1. PUBLIC WORKS PROJECT DELIVERY SYSTEM--DESIGN
6 AND BUILD PROJECTS AUTHORIZED.--

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

- 19 (1) the extent to which the project
20 requirements have been or can be adequately defined;
21 (2) time constraints for delivery of the
22 project;
23 (3) the capability and experience of potential
24 teams with the design and build process;
25 (4) the suitability of the project for use of

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1 the design and build process as concerns time, schedule, costs
2 and quality; and

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

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

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

18 (1) during phase one, and prior to
19 solicitation, documents shall be prepared for a request for
20 qualifications by a registered engineer or architect, either
21 in-house or selected in accordance with Sections 13-1-120
22 through 13-1-124 NMSA 1978, and shall include minimum
23 qualifications, a scope of work statement and schedule,
24 documents defining the project requirements, the composition of
25 the selection committee and a description of the phase-two

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1 requirements and subsequent management needed to bring the
2 project to completion. Design and build qualifications of
3 responding firms shall be evaluated and a maximum of five firms
4 shall be short-listed in accordance with technical and
5 qualifications-based criteria; and

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

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

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

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1 for a local public works project.

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

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

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

14 G. The procurement of a design and build project
15 delivery system qualifying for exemptions pursuant to
16 Subsection F of this section, including the services of any
17 architect, engineer, landscape architect, construction manager
18 or surveyor needed for the project, shall be accomplished by
19 competitive sealed bids pursuant to Sections 13-1-102 through
20 13-1-110 NMSA 1978 or by reverse auction pursuant to Section
21 13-1-110.1 NMSA 1978."

22 Section 10. Section 13-1-138 NMSA 1978 (being Laws 1984,
23 Chapter 65, Section 111) is amended to read:

24 "13-1-138. COST OR PRICING DATA REQUIRED.--When required
25 by the state purchasing agent or a central purchasing office, a
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1 prospective contractor shall submit cost or pricing data when
2 the contract is expected to exceed twenty-five thousand dollars
3 (\$25,000) and is to be awarded by a method other than
4 competitive sealed bids or reverse auction."

5 Section 11. Section 13-1-139 NMSA 1978 (being Laws 1984,
6 Chapter 65, Section 112, as amended) is amended to read:

7 "13-1-139. COST OR PRICING DATA NOT REQUIRED.--The cost
8 or pricing data relating to the award of a contract shall not
9 be required when:

10 A. the procurement is based on competitive sealed
11 bid or reverse auction;

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

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

15 D. the contract is for professional services; or

16 E. the contract is awarded pursuant to the Public

17 [~~Building~~] Facility Energy Efficiency and Water Conservation
18 Act."

19 Section 12. EMERGENCY.--It is necessary for the public
20 peace, health and safety that this act take effect immediately.